113-84

STIPULATION.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1884.

No. 1060

PULLMAN'S PALACE CAR COMPANY, GEORGE M. PULLMAN, LUTHER [illegible] GEORGE [illegible] INGTON W. JACKSON AND DA[illegible] E. [illegible],

Appellants,

vs.

ROBERT JOHN SPECK, JAMES DUNN, BY SIMEON STRAUS, HIS NEXT FRIEND, BRIDGET CONNELLY AND PATRICK CONNELLY,

Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

PHILADELPHIA BAR ASSOCIATION

BARHAM & DUNTHORP, LEGAL PRINTERS, 104 RANDOLPH STREET, CHICAGO.

Filed October 1884

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Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STIPULATION.

It is hereby stipulated by and between counsel hereto that the following statement and abstract of record are sufficient for the hearing of this cause.

A bill was filed in the Superior court of Cook county, Illinois, on August 15, 1883, by Robert J. Speck and James Dunn, who reside in England, and who are subjects of the Queen of Great Britian and Ireland, by Rosenthal & Pence, their solicitors, against the Pullman's Palace Car Company, George M. Pullman, Luther H. Pierce, Huntington W. Jackson, David B. Lyman, Bridget Connelly and Patrick Connelly, all of whom are citizens of Illinois.

James Dunn brought suit by Simeon Straus, his next friend, who is a citizen of Illinois.

Summons was issued, returnable to the September term, A. D. 1883, of said court, and served upon all of the said defendants with the exception of George M. Pullman and Huntington W. Jackson, on August 17, 1883, ten days before the return of said writ. The sheriff endorsed on said writ, on the 3d day of September, 1883, that the said defendants Pullman and Jackson were not found in the county; that on the 5th day of September, 1883, all of defendants,

who are appellants here in the present case, entered their appearance by Lyman & Jackson, their solicitors in said cause. (Rec., 29, 30 and 31.)

It is agreed that in said Superior court a new term commences on the first Monday of every month; that the rules of said court provide as follows: That "when any defendant shall enter and file an appearance in writing before default taken, the party entering such appearance shall, without any order, have twenty days, from the first day of the appearance term, within which to except, plead, answer or demur. By appearance term is meant the time at which the party may be defaulted for failure to appear." The rules also provide as follows: That "on and after the 3d day of each term defaults may be entered as to such defendants as have been served in due time and filed no appearance in writing." That on the 5th day of September, 1883, Bridget Connelly and Patrick Connelly, by Rosenthal & Pence, their solicitors, filed answers to said bill of complaint, admitting all the allegations in said bill (Rec., 63), and upon the same day filed their cross-bill in said cause against said appellants and the complainants in said original bill, namely, Speck and Dunn. That on September 20, 1883 (Rec., 31), the time for appellants to answer was extended by order of court for thirty days from said date, and upon motion of complainants in the cross-bill it was ordered that said defendants to said cross-bill answer the same within thirty days from said date, and by agreement of counsel the time for filing the answers to said bill and cross-bill was further extended until the 11th day of January, 1884, and that said answers were filed on said January 11, 1884, at the January term of said court. That said term continued until the commencement of the February term, 1884, said February term commencing on the first Monday of February. That on February 21st, during the February term, said appellants filed in said Superior court their petition for removal of the said cause to the Circuit court of the United States for the Northern district of Illinois, and that on said day leave was given to file their petition and bond for the removal of said cause. (Rec., 139.)

The original bill of complaint is as follows (Rec. 8):

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

SUPERIOR COURT OF COOK COUNTY—IN CHANCERY.

To the Honorable, the Judges of the Superior Court of Cook County, in Chancery sitting:

Humbly complaining showeth under your Honors your orators, Robert John Speck and James Dunn, the latter by Simon Straus, his next friend. That your orators, Robert John Speck, resides in

Hull, England, and that your orator, James Dunn, also resides in England. That on the 21st day of August, 1873, your orators, together with one Robert C. Dunn and one George Dunn, filed their bill of complaint in the said Superior court on the chancery side thereof, against Bridget Connelly and others, in which said bill of complaint it was alleged that he, the said Robert John Speck and he, the said James Dunn, and he, the Robert C. Dunn and he, the said George Dunn, were each seized in fee simple of the one undivided eighth part subject to the dower of said Bridget Connelly, and that she, the said Bridget Connelly, was seized of the undivided one-half part and dower in the other half of the following described premises in Cook county, Illinois, as tenants in common, namely: The south twenty-one and twenty one-hundredths (21.20) acres of the north half of the north-west quarter of section fourteen, township thirty-seven, north of range fourteen, East of the third principal meridian. Also the south-west quarter of the north-west quarter of said section fourteen, containing thirty-nine and seventy-five one-hundredths (39.75) acres more or less. Also the south-west fractional quarter of said section fourteen, containing forty-eight and sixty one-hundredths (48.60) more or less, being in the aggregate one hundred and nine and fifty-five one-hundredths (109.55) acres more or less, together with all the improvements, hereditaments and appurtenances thereunto belonging, including a private road or right of way one rod wide, commencing at a stake which is fourteen chains and six links south and fifteen chains and ninety-five links east from the north-west corner of the north-west quarter of said section fourteen, and running from said point of beginning north sixteen and a fourth degrees east, sixteen chains and eighty links to the center of the public road, running east and west on the north side of said north-west quarter, said line being the center of said private road. That said Bridget Connelly was duly brought into court, and such proceedings were had in said cause so that on the 6th day of June, in 1874, a decree was entered in said cause, finding the interest of all said complainants therein, and of said Bridget Connelly to be as alleged in said bill, and ordering a partition thereof, and appointed commissioners to make such partition. That afterwards said commissioners made their report to said court, finding that said premises were so circumstanced that a division thereof could not be made without manifest prejudice to the interests of the said parties, and reported the value of said premises to be the sum of $27,387.50. That the report of said commissioners being filed in said court the said court did afterwards on the fourth day of August, 1874, confirm the same, and ordered a sale of said premises, and also ordered that the same should not be made for less than two-thirds of the appraised value thereof, as before stated, and appointed commissioners to make such sale, and ordered that the proceeds of said sale be distributed to the respec-

tive parties before indicated, according to their respective rights and interests, as before stated, and as found by said decree of partition. That said Bridget Connelly consented to the sale of her dower interest therein, and filed the same in writing in said cause.

And your orators further allege that on or about the 19th day of October, 1874, said Robert C. Dunn died intestate, leaving neither widow or child nor parents him surviving, but leaving him surviving your orator Robert John Speck, your orator James Dunn and said George Dunn, his only heirs at law. That said James Dunn and George Dunn were the brothers of said deceased Robert C. Dunn, and that your orator Robert J. Speck was the only child or descendant of a child, and the only heirs at law of Ellen Speck, wife of William Speck, formerly Ellen Dunn, a sister of Robert C. Dunn, deceased, who had intermarried with said William Speck, the father of your orator, Robert John Speck, and that she, the said Ellen Speck, departed this life on or about the 17th day of February, 1852, leaving her surviving her said husband, William Speck, and their only child, your orator, Robert John Speck, her only heir at law, and that said Robert C. Dunn left no other brother or sister or descendant of any deceased brother or sister him surviving.

And your orators further allege that on or about July 21, 1879, said George Dunn died intestate, leaving him surviving no wife or child nor father or mother, but that he left him surviving your orators, his only heirs at law.

And your orators further allege that on the 11th day of September, 1873, said Bridget Connelly and Patrick Connelly, her husband, executed and delivered to Paul Cornell, trustee, a trust deed conveying to said Cornell her interest in the premises above described in trust, to secure the payment of a certain promissory note of the same date, executed by said Bridget and Patrick Connelly, for the sum of six thousand dollars, due one year after date, payable to the order of George W. Kretzinger and William S. Johnson, bearing interest at ten per cent. per annum, payable annually. That said promissory note and trust deed were executed by said Bridget and Patrick Connelly to secure said Kretzinger and Johnson for legal services rendered or to be rendered in and about the premises in question, and in and about the said partition suit above referred to.

And your orators further allege that afterwards one John I. Bennett became the partner of said Kretzinger and Johnson, and as such said firm of Bennett, Kretzinger and Johnson performed the legal services in and about the suit above referred to for and on behalf of said Bridgett Connelly.

That afterwards said firm of Bennett, Kretzinger and Johnson was dissolved, and said promissory note secured as above in the settlement of their partnership affairs, was endorsed to and became the property of said John I. Bennett.

And your orators further allege that Pullman Palace Car Com-

pany, a corporation existing under the statutes of Illinois, being desirous of purchasing the premises above described, under the decree of said Superior court above referred to, at once and without delay, did, on or about January 10, 1880, by its agents, represented unto said John I. Bennett, who was the attorney of said Bridget Connelly, in and about the matter of said partition suit, that said premises were not of the value, and could not be sold for two-thirds of the appraised value made by the commissioners appointed by said court as hereinabove set out, and thereupon it, by its agents, entered into an agreement with said John I. Bennett that if he would procure a re-appraisement of said premises under the order of said court and reduce the amount thereof and procure an immediate sale of said premises, that it would bid in and purchase said premise at a sale to be made by said court, and would, in addition thereto, pay to him the amount so secured by said trust deed so executed by said Bridget and Patrick Connelly, and that a release thereof should be executed by said trustee and left with the said Bennett, which should be filed for record only after the sale under said decree and confirmation of same, and that said company would make no claim upon her, the said Bridget, or the lands involved or the proceeds of the sale thereof, and that said bid and release of said trust deed should not affect the right of said Bennett to receive and collect his fees of said Bridget Connelly as solicitor in said cause, and for advances and expenses in such suit.

And your orators further allege that in pursuance of said agreement, said Bennett appearing on behalf of said Bridget Connelly in said cause in said Superior court, procured an order from said court, appointing a new commission to re-appraise the value of said premises, and such commission did proceed and re-appraise said premises at the sum of twelve thousand fifty dollars and fifty-five cents, being at the rate of one hundred and ten dollars per acre. And thereupon said Bennett upon his motion as the solicitor of said Bridget and Patrick Connelly, procured the court to approve said re-appraisement and to make a supplemental order that said premises be sold, permitting the purchaser at his option to pay all cash, or one-third cash and the balance in one and two years, secured upon said premises as originally provided in said decree of sale. Thereupon and on or about the 20th day of January, 1880, said Pullman Palace Car Company, in pursuance of said agreement, paid or caused to be paid to John I. Bennett, the sum of seven thousand dollars, the amount due upon said trust deed and note, and received from said Bennett said note and trust deed upon said premises. And they allege that at the time of the payment of said money and the delivery of said note and trust deed, a release of said trust deed executed by Cornell, trustee, was by agreement between said Bennett and the said company placed in the hands of said Bennett, with authority to file same for record after confirmation of sale made under said decree, and

with the distinct understanding between them that said release should not be filed for record until the purchase of said company and confirmation of said sale by said court. And thereupon after the payment to said Bennett as aforesaid, and the delivery of said note and trust deed and the execution of said release as aforesaid, advertisement was made by the commissioner so appointed by the court to make sale of said premises, in the daily edition, published on Tuesday of the Inter-Ocean newspaper, that he would sell said premises on the 6th day of March, 1880; that no other notice was given of the sale of said premises. That upon the day so fixed, the sale of said premises was made by said commissioners under and by virtue of the several decrees aforesaid.

And thereupon one Luther H. Pierce, acting for and as the agent of Pullman Palace Car Company, bid for said premises the sum of twenty-two thousand one hundred dollars, and said premises were struck off and sold to said Pierce for the sum aforesaid. That said commissioner made report of such sale to to said court, and thereupon objections were made by said Bridget Connelly to the confirmation thereof. That at the time of such sale, said John I. Bennett was no longer the attorney of said Bridget Connelly, but that such objections were made by other counsel in her behalf.

And your orators further allege that although objected to as aforesaid, said Pullman Palace Car Company insisted upon the confirmation and the overruling of said objections, and moved for the confirmation of said sale by said court.

And in order to induce said Bridget Connelly to withdraw her objections to the confirmation of said sale it, the said Pullman's Palace Car Company caused her to be notified that it would make application to said court to have the amount due upon said note and trust deed paid out of her share of the proceeds of said sale, concealing from her at the same time that said note and trust deed had been released as a lien upon said premises, and that by agreement between it and said Bennett the same should not be a claim upon said property or the proceeds of such sale, or against said Bridget Connelly personally. And thereupon she, the said Bridget Connelly, being advised by her then counsel (who did not know that said trust deed had been released, or of the agreement between said company and said Bennett) that the said trust deed was a lien, and that the court had the right to cause the amount thereof to be paid out of the proceeds of such sale, she, the said Bridget Connelly, believing that said trust deed could be so forced out of her share of the proceeds of said sale or against her interest, was induced thereby to withdraw her objections and consent to the confirmation of said sale upon the cancellation of said note of six thousand dollars, and the agreement of said company to release her from all liability by reason of such note and trust deed; that she, the said Bridget Connelly, did not then know of the said agreement be-

tween said Bennett and said Pullman Palace Car Company, nor that said Bennett had received $7,000 from said company; that thereupon said consent being obtained, said sale to said Pierce was confirmed, and the money was paid upon said purchase by Pullman Palace Car Company; that prior to the confirmation of said sale a *bona fide* offer was made to increase said bid in case such sale should be set aside, and a re-sale ordered, the sum of five thousand dollars, and to deposit the said sum of five thousand dollars in court as a guarantee for such offer, with an agreement on the part of the person so offering to forfeit said sum to the parties in interest, in case he should not bid five thousand dollars more than the sum so bid by said Pierce, and sum of five thousand dollars was thereupon paid into court for that purpose; that abundant evidence was also produced showing the court that said premises were of the value at that time of at least the sum of thirty thousand dollars.

And your orators allege that had said sale been set aside and a re-sale ordered at that time, said premises would have sold for at least fifty thousand dollars. That no evidence of fraud in the conduct of said sale on the part of the purchasers was introduced, nor was it known at the time that said premises were purchased for said Pullman's Palace Car Company. And thereupon the court refused to accept such increased bid and to re-open the sale upon the ground that said sale had been conducted regularly, and that the purchaser had acquired interests therein by reason of such bid, and that the court had no authority to deprive him of the same, and because said Bridget Connelly consented that the objections filed by her be overruled.

That your orators then resided in England, and were never in the State of Illinois; that they did not know, nor did their counsel know at that time, of the secret agreement above set out, or that said purchaser was paying anything more for said premises than the amount bid therefor at such sale; that it was not known to your orators, nor was any evidence shown to the court, of the said secret arrangement above referred to, and in consequence your orators made no objection to the confirmation of said sale. And thereupon, on the 16th day of March, 1880, the said court finally approved of the sale so made to said Pierce, and thereupon the commissioner under the order and direction of said court executed and delivered to said Pierce a deed of conveyance of said premises. That no claim or application was made on the part of said company, or of any other person, to said court, to have any portion of said purchase money belonging to said Bridget Connelly applied toward the payment of the amount due upon said note and trust deed, but the whole of the share of said Bridget Connelly was paid over to her, and said note and trust deed have been canceled and released as before stated.

And your orators allege that at the time of said sale it was not

known to the public or to any of the parties in interest that the trust deed so executed by Bridget Connelly would be released, nor was any provision made in any of the decrees of said court for the payment thereof out of the proceeds of such sale.

And your orators further allege that at the time of said secret agreement so entered into between said Bennett and the agent of said Pullman's Palace Car Company, and at the time of said sale and confirmation said palace car company was greatly interested in obtaining the premises in question, the same lying between the property upon which the town of Pullman is now situated, and Lake Calumet, and borders upon the lake for a long distance. That said company had at that time purchased a large amount of real estate, two thousand acres, more or less, lying in and about where the town or city of Pullman is now located. That all said purchases had been made in the name of other parties for said company, and the deeds to which had not been then placed of record, and the public and your orators did not know of such purchases. But they allege that it became very important for said Pullman's Palace Car Company to become the owner of the premises in question, and all the acts of said company and its agents were directed toward the concealment of its true design, and at the same time to obtain the property in question, regardless of the rights of others, and to defraud, if necessary, the true owners out of their rights, and to pay others having no interest in such property to assist them in such device; that the said company was induced to make said agreement with said Bennett, and to perform the various fraudulent acts hereinbefore set out and because of the importance and value of said premises to it in carrying out its schemes and in order to obtain title thereto at once before the public became aware of its other purchases adjoining same.

And your orators allege that said trust deed was made and filed for record after the commencement of said partition proceedings, and that it found no lien upon the interest of your orators, and that the same should have been paid out of the share of the proceeds belonging to the said Bridget Connelly; and that the same in law could not remain a lien upon said premises in the hands of the purchaser under the decree of said court.

And so your orators allege that by fraud and circumvention as aforesaid, Pullman's Palace Car Company caused said premises to be sold for at least seven thousand dollars less than they would have sold for had said Pullman's Palace Car Company, through its agents, not insisted upon its rights to a confirmation of said sale, and had the court or your orators known of the fraud above set out so perpetrated upon them; that the actual price paid by said Pullman's Palace Car Company for said premises was the sum of twenty-nine thousand one hundred dollars, whilst all tha. the parties in interest received was the sum of twenty-two thousand one hundred dollars,

and that your orators were deprived of their interest in the difference, through the fraudulent act and connivance of said Pullman's Palace Car Company.

And your orators further allege, that for some time prior to the first day of January, 1880, your orator, James Dunn, was an insane person, duly adjudicated to be such by a court of competent jurisdiction, and was at the time of the proceedings subsequent to January, 1, 1880, and ever since has been insane, and has been in a hospital for the insane.

And your orators allege that neither of them ever had any knowledge or notice of the facts hereinbefore stated, with reference to the orders made after January the first, 1880, or the facts pertaining to said sale, as above set out, until about the fifteenth day of June, 1883.

And your orators further allege that at the time of the sale as above set out, he, the said Luther H. Pierce, and he, the said George M. Pullman, and the said Pulman Palace Car Company had notice of the death of said Robert C. Dunn, and of said George Dunn and of the insanity of said James Dunn, as above set out.

And your orators allege that the judgment and decree of said court, finding the interests of the complainants in said original suit, and ordering a partition of said premises, and the decree ordering the sale thereof, entered on August the 4th, 1874, have never been revived, nor has any proceedings ever been had respecting the death of said George Dunn and Robert C. Dunn in said suit, nor have their deaths ever been suggested of record in said case.

And so your orators allege that the said sale was null and void, and that the same did not vest any title, but if any title was vested or passed by means of such sale and due to Pierce, it was only their interest as found by the court in its decree of partition on June the 4th, 1874, and in its decree of sale on August the 4th, 1874, viz: one-eighth part of said premises subject to the dower of said Bridget Connelly therein.

And they allege that the interests of your orators so acquired by the death of said Robert C. Dunn and George Dunn, have never been sold or disposed of, and that such interest remains undisposed of and is vested in your orators, each being entitled to an undivided one-eighth part thereof, by virtue of the death of said Robert C. and George Dunn respectively.

And your orators allege, that said sale was made without reviving said decree by the procurement of said Pullman's Palace Car Company, and in order to prevent other persons bidding at such sale, and that many persons who stood ready to bid for said property, and to pay for same, refused to bid by reason of the death of said Robert C. Dunn and George Dunn, and the insanity of said James Dunn, without revival of said judgment and decrees, and said Pullman's Palace Car Company knew that said premises would sell for a much greater price in case said decrees should be revived.

And your orators further allege, that on the 13th day of May, 1880, said Luther H. Pierce and wife conveyed by special warranty deed said premises to the said George M. Pullman, which deed was filed for record in the recorder's office of Cook county, Illinois, on May 19, 1880, and that by deed filed for record in said recorder's office on July 2, 1880, said George M. Pullman and wife, by quit claim deed conveyed said premises to David B. Lyman and Huntington W. Jackson, as trustees of the Pullman Land Association, and that by quit claim deed recorded October 7, 1881, said Huntington W. Jackson and David B. Lyman, as trustees of said Pullman Land Association, conveyed said premises to Pullman's Palace Car Company, a corporation existing under the laws of the State of Illinois, by special act of the legislature approved February 22, 1867, and for whom since land was purchased by said Pierce.

And your orators allege, that said Jackson and Lyman never had any personal interest in said premises, and that they never paid anything therefor when the same was conveyed to them, nor did they receive anything therefor when they conveyed the same, as aforesaid; that said purchase was made by said Pierce for said Pullman's Palace Car Company, and that said Luther H. Pierce and the said George M. Pullman and the said Huntington W. Jackson and David B. Lyman, and the said Pullman's Palace Car Company, at the time of the conveyance to them respectively, as hereinbefore set out, had notice and knowledge of all the facts hereinabove alleged and set out.

And your orators allege, that said Pullman Land Association was controlled by said Pullman's Palace Car Company, and was created as a temporary expedient for the sake of vesting said title in said Pullman's Palace Car Company; that said association was not a corporation; that he, the said George M. Pullman, was director and chief executive officer of said land association, and that he, the said George M. Pullman, was president and director and chief executive officer of Pullman's Palace Car Company at the time of said conveyance to said Pullman's Palace Car Company. and ever since the first day of January, 1880, he, the said George M. Pullman, has been the president and chief executive officer and director of said Pullman's Palace Car Company.

And your orators further allege, that in and by virtue of the charter of said Pullman's Palace Car Company, it is provided that said corporation shall have power to manufacture, construct and purchase railway cars with all convenient appendages and supplies for persons traveling therein, and the same may sell or use, or permit to be used in such manner and upon such terms as the said company may think fit and proper. And it is further provided in and by said charter, that it may be lawful for said corporation to acquire and hold such real estate as may be deemed necessary for the successful prosecution of their business, and may have power to sell and convey the same.

And your orators allege that said Pullman's Palace Car Company, prior to the purchase of the premises aforesaid, had acquired by purchase and conveyance to it of large tracts of real estate, amounting in the aggregate, as your orators are informed and believe, to about two thousand acres, which real estate is of great value.

And your orators allege that lands so acquired are not necessary for the successful prosecution of its business, as permitted by its charter; that said lands so acquired are of the value of many hundred thousands of dollars, and that such purchase and holding of real estate is contrary to the laws and policy of the State of Illinois, and that such conveyance so made to it of the premises aforesaid is null and void, and that said lands are not necessary or adapted to the successful prosecution of their business under their said charter.

And your orators herein now offer to do equity, and to return unto said George M. Pullman, or the Pullman's Palace Car Company, or said Luther H. Pierce, or whoever may be entitled thereto, the proceeds of said sale so received by them, and they hereby make a tender thereof, and offer to pay the same to the parties in interest, as the court may direct, upon the vacation and cancellation of said sale.

And so your orators allege that they are the owners each of an undivided one-fourth of said lands.

To the end, therefore, that said Pullman's Palace Car Company, George M. Pullman, Luther H. Pierce, Huntington W. Jackson, David B. Lyman and Bridget Connelly and Patrick Connelly, who are made defendants hereto, may full, true and perfect answer make to all and singular the allegations in this bill contained without oath (answer upon oath being hereby expressly waived), and that decree may be entered by this court vacating and setting aside said sale and said order of confirmation, and all orders made subsequent to January the first, 1880, above referred to, and vacating and setting aside the deeds to said Pierce and Pullman and Jackson and Lyman and the Pullman's Palace Car Company, and vesting the title of the one undivided half of said premises in your orators, and ordering a partition to be made between your orators and said defendants of said premises, and doing all other things which may be necessary to vest in them their title to said premises in severalty, or in lieu of such partition, if the same cannot be made without manifest prejudice to the parties in interest, that a sale may be ordered and decreed, and a distribution of the proceeds had in accordance with equity and the practice of this court, and that your orators may have such other and such further relief in the premises as may be agreeable to equity and good conscience, and as to your Honors may seem meet.

May it please the court to grant unto your orators a peoples'

writ of summons direct to said defendants in accordance with the practice of this court, and your orators will ever pray, &c.

ROBERT JOHN SPECK,
By ROSENTHAL & PENCE, *his Solicitors.*

JAMES DUNN, by SIMEON STRAUS, *his next friend, and*
By ROSENTHAL & PENCE, *Solicitors.*

ROSENTHAL & PENCE,
Solicitors, of Counsel.

The answer of the Pullman's Palace Car Company (Rec. 32) to the original bill, omitting formal parts, is as follows:

That it admits that, on the 21st day of August, 1873, the said complainants and others filed a bill, as alleged in the said bill of complaint, and that proceedings were had thereunder, resulting in a decree of sale of said premises on the 4th day of August, 1874, as alleged in said bill of complaint.

This defendant further saith, that he has no knowledge as to whether the said Robert C. Dunn died as alleged in said bill of complaint, or as to whether the said George Dunn died as alleged in said bill.

This defendant further saith, that it has no knowledge, excepting as set forth by the records of Cook county, as to whether the said Bridget Connelly and husband delivered a trust deed to Paul Cornell, as alleged in said bill of complaint; that this defendant has no knowledge as to the subsequent ownership of the said trust deed or note, or as to what was done thereunder. This defendant further saith, that it denies that on or about the 10th day of January, 1880, it was desirous of purchasing the premises set forth in said bill of complaint, or that it had any interviews, by its agents, with John I. Bennett, as attorney of Bridget Connelly, or that it made any arrangement with the said John I. Bennett, as agent or attorney of the said Bridget Connelly.

This defendant has no knowledge as to what steps were taken by John I. Bennett, in the said partition proceedings, and denies that it had any arrangement with the said John I. Bennett, as the agent or solicitor of Bridget Connelly, as to what course should be taken in the said partition proceedings. This defendant further denies, that on the 20th day of January, 1880, it paid any sum of money to John I. Bennett, for the indebtedness secured by the said note and trust deed. This defendant further denies, that it ever made any agreement in relation to the release of said trust deed, and had no knowledge as to any agreement existing between Bennett and any one, in relation to the said trust deed or said release. This defendant, further answering, says that, at the time of the sale under said partition suit and confirmation of the sale by this court, this defendant had no

interest, legal or equitable, in the said premises. This defendant, further answering, denies that Luther H. Pierce acted as agent of the Pullman Palace Car Company, or that the said Luther H. Pierce, or any one, bid any sum of money for the said property, at said sale under said partition suit, in behalf of this defendant. This defendant has no knowledge as to what objections, if any, were filed by the said Bridget Connelly, to the confirmation of the said sale, as alleged in such bill.

This defendant further answering, denies that it insisted upon the confirmation and approval of the sale or the overruling of the said objections to the said complainant, as alleged in said bill of complaint. This defendant further answering, denies that it notified the said Bridget Connelly to withdraw her objections to the confirmation of the said sale or made any threats or gave any notice to the said Bridget Connelly in relation to the said sale, or in relation to the said trust deed and note. This defendant had no knowledge as to whether the said Bridget Connelly withdrew her objections to said sale, or, if she withdrew her objections, what influenced her to so withdraw.

This defendant, further answering, denies that seven thousand dollars ($7,000) or any other sum was ever paid by this company to said Bennett, or any other person in connection with the said sale by this court.

This defendant, further answering, saith that it has no knowledge as to whether any subsequent offers were made in this court for the said property, or as to what proceedings were had except as shown by the records of the court. This defendant further answering, denies that there was any irregularity in the said sale or the proceedings of this court in the said partition suit.

This defendant further answering, denies that at the time of the said sale and confirmation of the same by this court, referred to in the said bill of complaint, this company had purchased large amounts of real estate, to wit: two thousand acres, more or less, lying in or about where the town of Pullman is located, and says that at the said time this company did not hold the legal or equitable title to an acre of property in the said village of Hyde Park. This defendant further denies each and every allegation contained in the said bill of complaint, alleging that this defendant or its agents by fraud or circumvention caused the said property to be sold by this court, or purchased the same, or that it was interested in any way in the said sale and confirmation thereof by this court. This defendant further answering says, that on the 2nd day of July, 1880, George M. Pullman and wife conveyed to Huntington W. Jackson and David B. Lyman, as Trustees of the Pullman Land Association, the said property for full value. This defendant further answering saith, that on the 4th day of August, 1880, it purchased the said premises described in said bill of complaint from Huntington W. Jackson and

David B. Lyman, as Trustees of the Pullman Land Association; that at said time it paid the said Huntington W. Jackson and David B. Lyman, as trustees, the full cash value for the said premises in cash.

This defendant further answering, denies that the said sale was null and void, or that the same did not pass any title, or that the same did not pass the entire title and interest of the complainants in this bill. This defendant further answering, denies that the interests of the complainants, if any, acquired by the death of Robert C. Dunn and George Dunn, have never been sold or disposed of, or that such interest remains undisposed of, and is vested in the said complainants. But, on the contrary, saith that the entire interest of the said complainants, at the time of said sale was disposed of, and passed by the sale made by this court. This defendant denies that the said sale was made without reviving the said decree by the procurement of this defendant, in order to prevent other persons from bidding at such sale, and says that at the time of said sale it had no kuowledge of the said sale being made. This defendant admits that on the 13th day of May, 1880, Luther H. Pierce and wife conveyed by special warranty deed the said premises to George M. Pullman, and admits that the said George M. Pullman and wife conveyed to Huntington W. Jackson and David B. Lyman, as trustees of the Pullman Land Association, the said property. But this defendant says that it is informed, and believes that the said transfer by the said George M. Pullman and wife to said Huntington W. Jackson and David B. Lyman, as trustees, was made without any notice of any claims by any person that the said sale was not regular in all respects, and that said sale was made for full value.

This defendant further denies that it controls the said Pullman Land Association, or that the said Pullman Land Association was created as a temporary expedient, for the purpose of vesting the said title in the Pullman's Palace Car Company. This defendant further denies that the said George M. Pullman was the director and chief executive officer of the Pullman Land Association.

This defendant further answering, admits that said George M. Pullman was president and one of the directors of the said Pullman's Palace Car Company at the time of said purchase by said Pierce, and ever since the 1st day of January, 1880, the said George M. Pullman has been the president and chief executive officer of the defendant, but this defendant denies that it had in any way any notice of any irregularity or defense to the said sale made by this court.

This defendant denies that it has purchased large tracts of real estate, aggregating as alleged in said bill, about two thousand acres.

This defendant further denies that it has purchased any land which has not been necessary for the successful prosecution of its business. This defendant further answering, saith that it never has

been approached by these complainants or any one with any suggestions that the said sale was not regular in all respects, prior to the filing of this bill, that it had supposed that the said complainants were satisfied with said sale; that the solicitors of the said complainants had on more than one occasion assured this defendant, or its agents, that the said sale was correct and regular in all respects, and that a good title passed by it, that this defendant is informed that the sale which was made by this court, referred to in the said bill of complaint, the complainants, by their solicitors, were anxious to have completed, and the said solicitors of the complainants made a motion for confirmation of the said sale, and urged a confirmation of the said sale, believing it to be for the best interest of their clients that the said sale should be made.

This defendant avers that under the facts hereinbefore stated, it is a *bona fide* purchaser of the property mentioned aforesaid, without notice of any of the matters and things alleged in said bill, except as hereinbefore admitted, and insists that it is entitled to all the rights of defense of such *bona fide* purchasers without notice as aforesaid, and prays that it may be allowed the same benefit of this defense as if the said defense had been made by plea.

This defendant further submits that the complainants have not in their bill shown any cause in equity, or cause entitling them to proceed against it in this honorable court, and it prays all such benefit as if it had demurred to the said bill.

The answer concludes in the usual form, denying all manner of unlawful combination, confederacy, &c.

The answer of George M. Pullman (Rec., 40) to the original bill, omitting the formal parts, is as follows:

That he admits that on the 21st day of August, 1873, the complainants, together with Robert C. Dunn and George Dunn, filed their bill of complaint in the said Superior court on the chancery side thereof, against Bridget Connelly and others, containing the allegations as stated in said bill of complaint, that such proceedings were had thereunder, that a decree was entered on the 1st of June, 1874, and that thereunder the commissioners made their report as alleged in said bill of complaint. This defendant has no personal knowledge as to whether the said Robert C. Dunn died, as alleged in said bill, or as to who his heirs were, "but is informed and believes that the allegations of the bill are correct as to the death and heirs of said Robert C. Dunn." This defendant further answering, says that he has no knowledge as to the death of the said George Dunn, but is informed and believes that the allegations in relation to the death and heirship of the said George Dunn are correctly stated in said bill.

This defendant further answering, says that he has no personal knowledge as to the allegations contained in relation to Bridget Connelly and Patrick Connelly executing and delivering to Paul

Cornell a trust deed and promissory note, as alleged, or as to the subsequent ownership of the said trust deed and note, prior to the time of his purchase of said trust deed and note, and puts the said complainants upon strict proof as to all of the said matters.

This defendant further answering, denies that the Pullman Palace Car Company was desirous of purchasing the said premises described in the said bill of complaint, as stated in said bill of complaint, and denies that the said Pullman's Palace Car Company by its agents or through any parties had any dealings with John I. Bennett, or any person in relation to the purchase of the said premises, or in relation to the said partition proceedings, and this defendant specifically denies each and every allegation in relation to the connection of the said Pullman's Palace Car Company with the said partition proceedings or the sale made by the court thereunder.

This defendant further answering, denies that the said Pullman's Palace Car Company ever agreed or ever paid any sum of money to the said John I. Bennett or influenced him in any way in relation to the said partition proceedings. This defendant further answering, denies that one Luther H. Pierce was agent of the Pullman's Palace Car Company, or that the said Luther H. Pierce at said sale made by the said court purchased the said premises or paid any sum of money therefor for and in behalf of the said Pullman's Palace Car Company.

This defendant further answering, denies that the Pullman's Palace Car Company took any steps in relation to the confirmation of the said sale, or that the said Pullman's Palace Car Company had any knowledge of the said sale.

This defendant further denies that it, the Pullman's Palace Car Company took any step or induced the said Bridget Connelly to withdraw her objection to the said sale or caused any notice to be given to her that application would be made to court to have the amount due upon said note and trust deed paid out of her share of the proceeds of said sale.

This defendant further answering, denies that the Pullman's Palace Car Company had any agreement in relation to the release of the said trust deed or that it held out any inducements to Bridget Connelly to withdraw her objections to the confirmation of the said sale.

This defendant further denies that there was any secret agreement as alleged between the said Pullman's Palace Car Company and the said John I. Bennett in relation to the said sale and purchase under the said decree.

This defendant further answering, denies that at the time of said sale the Pullman's Palace Car Company was interested in obtaining the premises in question, and denies that the said Pullman's Palace Car Company purchased any large amount of real estate as alleged in said bill of complaint.

This defendant further answering, denies each and every allegation

in relation to the part taken by the said Pullman's Car Company in relation to the said sale of the property in question.

This defendant further answering, denies that by fraud and circumvention the Pullman's Palace Car Company caused the said premises to be sold for at least seven thousand dollars less than they would have been sold for had not the said sale been confirmed.

This defendant further answering, says that he is informed and believes and alleges that the sum of twenty-two thousand one hundred dollars was bid at the sale made and conducted under the order of court, after due notice had been given pursuant to the order of court, of said sale, that all persons had an opportunity of bidding at said sale, and that said sale was attended by a large number of persons, and that the bidding was spirited, and that the land brought its full market value. This defendant further denies that there was any agreement on the part of any one to prevent any person from bidding at the said sale, or to prevent the land from being sold at its full market value at said sale.

This defendant admits that he did bid through his agent, Luther H. Pierce, the sum of twenty-two thousand one hundred dollars for said property, and previously purchased the note secured by said trust deed from the party holding it, paying therefor the sum of seven thousand dollars. But denies that he purchased it in the manner as alleged in said bill, and denies that in such purchase there was any fraudulent agreement, act or corrupt intent.

This defendant further answering, says that no fraud was committed either on the said Dunns or on the said Bridget Connelly by his purchasing the said trust deed and notes. And this defendant further answering, insists that the said sale so made by the court, was a *bona fide* binding sale, and that both of the Dunns and Mrs. Connelly are estopped from questioning the sale.

This defendant further answering, says that he was informed and verily believes that it was not necessary to revive the said suit after the death of the said George C. Dunn and Robert C. Dunn, and that it was not necessary to suggest their death upon the record in said case; that by the statute laws of the State of Illinois, the entire interest of each and every one complainants in said suit, was offered for sale by the commissioners specially appointed therefor, and that there being no new parties in interest, the entire interest of the complainants passed by the said sale.

This defendant further answering, denies that the said sale was null and void, or that the same did not vest any titles, or that the said title vested by the said sale was only the interest of the complainants in this case, which they held prior to the death of said Robert C. Dunn and George Dunn. This defendant further answering, denies that the interest of the said complainants acquired by the death of the said Robert C. Dunn and George Dunn, have never been sold or disposed of, and that such interest remains dis-

posed of or vested in the said complainants. This defendant further answering, says that the said interests were fully disposed of by the said sale, and that the same are vested at the present time by mesne conveyances in the Pullman's Palace Car Company. This defendant further answering, denies that the said sale was obtained by the procurement of the Pullman's Palace Car Company without reviving the said decree in order to prevent other persons from bidding at the said sale. And this defendant denies that at said sale any person abstained from bidding on account of the said bill not having been revived, or on account of the alleged insanity of the said James Dunn. That this defendant had no knowledge or notice in any way or shape whatever by the said proceeding or otherwise that the said James Dunn was insane.

And this defendant denies that if said suit had been revived the said property would at said time have been sold for any greater sum than was bid.

This defendant, further answering, denies that he was guilty of any fraud, imposition or other improper conduct in relation to the proceedings of court, or the said sale, or the confirmation of said sale, and insists that he purchased at the said sale in perfect good faith, and paid full value for the said property, and obtained a good and perfect title to the said property; that this defendant was assured by the present solicitors for the complainants, that it was not necessary to revive the said suit, and that the said sale was a valid one in all respects. This defendant, further answering, admits that on the 12th day of May, 1880, Luther H. Pierce and wife conveyed, by a special warranty deed, said premises to this defendant, and that by deed filed for record July 2, 1880, this defendant and wife conveyed, by quit claim deed, the said premises to Huntington W. Jackson and David B. Lyman, as trustees of the Pullman Land Association. This defendant, further answering, says that said conveyance to Huntington W. Jackson and David B. Lyman, as trustees, was made for full value, and that they held their title for parties who contributed money under an arrangement with this defendant.

This defendant, further answering, admits, that by deed subsequently executed, the said trustees conveyed said premises to the Pullman's Palace Car Company. This defendant, further answering, says that the said conveyance to the said Pullman's Palace Car Company was made for full value, the cash at that time being paid to the said trustees for said conveyance. This defendant, further answering, says that the said Pullman's Palace Car Company never had any, and does not now have any, interest in the affairs of the Pullman Land Association. This defendant, further answering, says that the said conveyance to the said Huntington W. Jackson and David B. Lyman as trustees of the Pullman Land Association, and the subsequent conveyance by the said Jackson and Lyman, trustees,

to the Pullman's Palace Car Company, was made for full value, without notice to either of the said grantees, that there was any irregularity in the said sale or said proceedings, or that there had been any improper conduct on the part of any one, and that said conveyances were received by the said parties in perfect good faith, and that the said parties were, each of them, *bona fide*, innocent holders of the said property. This defendant, further answering, denies that the Pullman Land Association was created for the sake of vesting said title in the said Pullman's Palace Car Company, or that the said Pullman Land Association was created for any purpose in connection with any interest of the Pullman's Palace Car Company therein. This defendant, further answering, denies that the said Pullman's Palace Car Company have purchased any property except what was necessary for its business. This defendant further answering, says that he never had any information from the said complainants or any one that they were in any way dissatisfied with the said sale; that there has never been any offer made to return the money paid at the said sale by the said complainants excepting as contained in the said bill of complaint. This defendant, further answering, says that the said Pullman's Palace Car Company has expended very large sums of money in erecting permanent works and shops for the said company, and buildings for the comfort and convenience of the operators of the said company, and in constructing the necessary roads beautifying the grounds about the said buildings; that all of said improvements had greatly enhanced the value of the said property; that if said improvements had not been made said property would have been of little or no more value than it was at the time of the said sale by said court. This defendant, further answering, says that he has never been approached by these complainants, or any one, with any suggestions that the said sale was not regular in all respects prior to the filing of this bill; that he had supposed that the said complainants were satisfied with the said sale; that the solicitors of the said complainants had on more than one occasion assured this defendant or his agents that the said sale was correct and regular in all respects; and that a good title passed by it; that this defendant is informed and believes that the sale which was made by this court, referred to in said bill of complaint, the complainants, by their solicitors, were anxious to have completed, and that the said solicitors of the complainants made a motion for the confirmation of the said sale, and urged a confirmation of the said sale, believing it to be for the best interests of their clients that said sale should be made. This defendant, further answering, denies that there is any equity in complainant's said bill, and submits that the plaintiffs have not, in their bill, shown any case in equity, or case entitling them to proceed against him in this honorable court, and he prays all such benefit as if he had demurred to the said bill.

The answer concludes in the usual way, denying all manner of unlawful combination, confederacy, etc.

The answer of Luther H. Pierce (Rec., 51) to the original bill, omitting the formal part, is as follows:

That he admits that on the 21st day of August, 1873, the said complainants, with Robert C. Dunn and George Dunn, filed their bill of complaint in said court of Cook county, against Bridget Connelly and others, as alleged in said bill of complaint, and that said alleged proceedings were had thereunder as alleged, resulting in the report of the commissioners, which was confirmed on the 4th day of August, 1874, ordering a sale of the said premises for not less than two-thirds the appraised value thereof, and appointing a commissioner to make such sale.

This defendant, further answering, says that he has no knowledge as to the alleged death of Robert C. Dunn, or his heirship, or the alleged death of George C. Dunn and his alleged heirship.

This defendant, further answering, says that he has no personal knowledge as to whether the said Bridget Connelly and Patrick Connelly, her husband, executed and delivered a trust deed to Paul Cornell, as trustee, conveying her interest in the said premises to Paul Cornell, as trustee, to secure the payment of a certain promissory note, payable to the order of said Kretzinger and Johnson, as alleged in said bill of complaint. This defendant has no personal knowledge as to the subsequent ownership of the said trust deed and note.

This defendant, further answering, denies that the said Pullman's Palace Car Company, by its agents, on or about the 10th day of January, 1880, entered into an arrangement or agreement with John I. Bennett, as attorney of Bridget Connelly, to have a re-appraisement of said premises, and to procure an immediate sale, or as to any agreement as to the amount which should be bid for the said premises.

This defendant, further answering, denies that there was any arrangement entered into on the 10th day of January, 1880, or that the said Pullman's Palace Car Company paid or caused to be paid any sum of money to the said John I. Bennett for the said note or trust deed, or that the said Pullman's Palace Car Company then received said note and trust deed from the said John I. Bennett.

This defendant further answering admits, that at the sale of the said property under the decree of the said Superior court of Cook county, he purchased the said premises, paying therefor the sum of twenty-two thousand, one hundred dollars ($22,100); that said premises were struck off and sold to him at the said sum aforesaid; that said commissioner made a report of said sale, which was confirmed by the said court, and that a conveyance was duly made by the said commissioner, vesting all the right, title and interest of the said parties to the said partition suit in this defendant. This defendant further answering denies, that at said sale he acted as the agent of the said Pullman's Palace Car Company, and says that he had no

understanding or agreement, directly or indirectly, with the said Pullman's Palace Car Company, in relation to the said property in question. That at said sale he acted in behalf of George M. Pullman individually, in making the said bid and paying the said sum of money. This defendant further answering admits, that subsequently he made a conveyance of the property in question to the said George M. Pullman. This defendant further answering, denies each and every allegation in relation to there being any fraud in relation to the entry of the said decree and sale in the said case, or in making the said sale, or in the matter of the confirmation of the said sale. Further answering this defendant says, that said sale was in all respects fairly conducted; that said sale was largely attended; that the bidding at said sale was spirited; and this defendant verily believes that the said property was sold at that time for its full market value. This defendant further answering says, that for a long period of time prior to the said sale, said property had been greatly depressed in value, and that the valuation placed upon it by the said commissioners at the reappraisement was a fair value at the time said reappraisement was made. That the said sale was made for all that it could have realized at that time, in the judgment of this defendant, had the said sale been made in private. This defendant further submits that the complainants have not in their bill shown any case in equity or case entitling them to proceed against him in this honorable court, and prays all such benefit as if he had demurred to the said bill.

The answer concludes in the usual form and denies all manner of unlawful combination, confederacy, &c.

The answers of Huntington W. Jackson and David B. Lyman (Rec., 55) to the original bill, omitting the formal part, is as follows:

That they admit that on the 21st day of August, 1878, said complainants and Robert C. Dunn and George Dunn filed their bill of complaint in said Superior court, in the chancery side thereof, against Bridget Connelly and others, in which said bill of complaint the allegations were contained and the relief sought as set forth in said bill of complaint. That these defendants admit that said Bridget Connelly was brought into said court and that such proceedings were had so that on the 4th day of August of 1874, a decree was entered, as stated in said bill of complaint.

These defendants further answering, admit that the commissioners made their report as stated in said bill of complaint. These defendants further say that they have no knowledge as to whether, on the 9th day of October, 1874, Robert C. Dunn died leaving heirs as stated in said bill of complaint, or that the said Robert J. Speck was the only heir of Ellen Speck, wife of William Speck, or that the said Ellen Speck departed this life on or about the 17th day of Feb-

ruary, 1882, leaving her surviving her husband, William Speck, and their child, Robert John Speck, as stated in said bill of complaint.

These defendants further answering say, that they have no knowledge as to whether George Dunn died July 21, 1879, as stated in said bill of complaint. These defendants further answering, admit that, as shown by the records of Cook county, on the 11th day of September, 1873, Bridget Connelly and Patrick Connelly delivered to Patrick Cornell, trustee, a trust deed conveying to the said Cornell all interest in the said premises above described, to secure the payment of a certain promissory note of the same date, executed by the said Bridget Connelly and Patrick Connelly, as stated in said bill of complaint. That these defendants have no knowledge as to the consideration of the said promissory note or trust deed, or as to the relations between John I. Bennett and the said Kretzinger and Johnson, or as to the subsequent ownership of the said promissory note, as stated in said bill of complaint.

These defendants further answering say, that they have no knowledge as to whether the said Pullman's Palace Car Company did on or about January 10, 1880, by its agents, make representations to or agree with the said John I. Bennett, as attorney of said Bridget Connelly, as alleged by said bill of complaint. These defendants further say that they have no knowledge as to whether the said Bennett obtained an order from the said court appointing new commissioners to re-appraise the value of the said premises, as alleged by the said bill of complaint, in accordance with any understanding or arrangement with the said Pullman Palace Car Company, or any other person.

These defendants further say, that they have no knowledge as to what steps were taken by the said Bennett or any other person to obtain the approval of the court for the re-appraisement, or as to what steps were taken in relation to the entry of the supplemental order, as alleged in said bill of complaint.

These defendants further say, that they have no knowledge as to whether the said Pulman's Palace Car Company or any other person paid, or caused to be paid, to the said John I. Bennett or any other person, the sum of seven thousand dollars ($7,000), upon said trust deed and note, as alleged in said bill of complaint. These defendants further answering say, that they have no knowledge as to the payment of the money, or delivery of the note or trust deed with release, as alleged in said bill of complaint, or as to whether there was any arrangement or understanding in relation to the said release. These defendants further say, that they have no knowledge as to the advertisement by the commissioners, appointed by the court to make said sale, excepting so far as shown by the records of this court. That these defendants have no personal knowledge as to any subsequent proceedings or orders attending the sale of said premises, excepting as shown by the records of the said court. These defend-

ants have no knowledge as to whether the said premises could have been sold for a greater sum had the said court refused to confirm the sale of the said premises. That they have no knowledge of any fraud in relation to the conduct of said sale, or the purchase of said premises by the purchaser or any other person.

These defendants further say, that while it may be true that the said complainants resided in England, that the present counsel of the complainants in this case were the counsel of the said complainants in the partition suit set forth in the said bill of complaint. These defendants further answering, deny that at the time said partition suit was pending, the said Pulman's Palace Car Company was interested in obtaining the premises in question, or that the said company purchased at that time large amounts of real estate, amounting to two thousand acres, more or less, or about where the town of Pullman is now located. These defendants further answering, say that so far as they know, the said Pullman's Palace Car Company had no interest in the purchase of the premises alleged to have taken place in the said partition suit. These defendants further deny that the Pullman's Palace Car Company paid any sums of money for the said premises, or that it purchased the said premises at the sale made in the said partition suit made under the order of this court.

These defendants further say that they have no knowledge as to whether the said complainant James Dunn was insane or was adjudicated insane at any time, or whether he is now insane. These defendants further answering admit, that on the 13th day of May 1880, Luther H. Pierce and wife conveyed by special warranty deed the said premises to George M. Pullman, and that said George M. Pullman and wife on the 2d day of July 1880, conveyed the said premises with other property, to these defendants as trustees of the Pullman Land Association. But these defendants further answering say, that the said conveyance was made for full value *bona fide*, and was made for the benefit of parties for whom these defendants hold the legal title. These defendants further answering, admit that they as trustees of the Pullman Land Association conveyed the said property subsequently to the Pullman's Palace Car Company, but these defendants further answering say, that the said conveyance was made by these defendants for full value and that at the time of said conveyance, these defendants had no notice nor had the said Pullman's Palace Car Company any notice that any party was dissatisfied with the proceedings of this court by which the said property was sold, and title passed, and that one of the solicitors, who are now the solicitors for the complainant in this case, on more than one occasion assured these defendants, both prior to their conveyance to the Pullman's Palace Car Company and subsequently that the said partition proceedings were regular in all respects, and that a good title had passed by the said purchase and sale. These defendants further deny that at the time of the conveyance to them and their

conveyance to the Pullman's Palace Car Company, they or either of them, had any notice of the facts as alleged and set forth in said bill of complaint. These defendants further answering, deny that the said Pullman Land Association was controlled by the said Pullman's Palace Car Company or was created as a temporary expedient for the purpose of vesting the said title in the Pullman's Palace Car Company.

These defendants further answering, deny that George M. Pullman was the director and chief executive and officer of the Pullman Land Association. These defendants further answering, deny that the Pullman's Palace Car Company prior to the purchase of said premises from these defendants, acquired by purchase and conveyance, large tracts of real estate, amounting in the aggregate to about 2,000 acres, but say the said Pullman's Car Company had never purchased any large amount of property excepting what was actually necessary for its legitimate business, and that the records of Cook county will show that the Pullman's Palace Car Company is not the owner of property aggregating about 2,000 acres, or anywhere near said amount of property. And these defendants aver that under the facts hereinbefore stated, they are *bona fide* purchasers without notice of any of the matters or things alleged in said bill, except as hereinbefore stated, and insist that they are entitled to all the rights of defense as such *bona fide* purchasers without notice as aforesaid, and pray that they may be allowed the same benefit of this defense as if the said defense had been made by plea. These defendants further submit, that the complainants have not in their bill shown any case in equity, or case entitling them to proceed against these defendants in this honorable court, and pray all such benefit as if they had demurred to the said bill.

The answer concludes in the usual form, denying all manner of unlawful combination, confederacy, etc.

The cross-bill of Bridget Connelly and Patrick Connelly (Rec., 64) after describing their interest in said property, makes substantially the same allegations as in the original bill of complaint, and ask for themselves similar relief to that prayed for by the original complainants.

Pullman's Palace Car Company, George M. Pullman, Luther H. Pierce, Huntington W. Jackson and David B. Lyman filed substantially the same answers to the cross-bill as those filed in the original bill.

The petition for removal is as follows (Rec. 128):

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE SUPERIOR COURT OF COOK COUNTY, TO THE FEBRUARY TERM, A. D. 1884.

Robert John Speck and James Dunn, the latter by Simon Strauss, his next friend,
Complainants,
vs.
Pullman's Palace Car Company, George M. Pullman, Luther H. Pierce, Huntington W. Jackson, David B. Lyman, Bridget Connelly and Patrick Connelly,
Defendants.
} *In Chancery.*

To the Honorable, the judges of the Superior court of Cook county, State of Illinois, in chancery sitting:

Your petitioners, Pullman's Palace Car Company, a corporation created and existing under and by virtue of the laws of the State of Illinois, George M. Pullman, Luther H. Pierce, Huntington W. Jackson and David B. Lyman respectfully show that they are defendants in the above mentioned suit brought in said court by said complainants to the September term, A. D. 1883, the original bill in said suit having been filed on or about the 15th day of August, A. D. 1883. Your petitioners further respectfully show that the matter and amount involved and in dispute in the above entitled cause exceeds, exclusive of costs, the sum or value of five hundred dollars. Your petitioners further respectfully show that the only controversy in said suit is between citizens of a state of the United States, and citizens or subjects of a foreign state, and that your petitioners were at the time of the commencement of this suit and still are citizens of the State of Illinois. That Robert John Speck was at the time of the commencement of this suit and still is a citizen or subject of that part of Great Britain commonly called England, and James Dunn was at the time of the commencement of said suit and still is a citizen or subject of that part of Great Britain commonly called England. Your petitioners further state that the said Bridget Connelly and Patrick Connelly were at the time of the commencement of this suit and still are citizens of the State of Illinois, and are unnecessary parties to the said suit, and that the only controversy in said suit is the controversy between the said Robert John Speck and James Dunn on one side, both being citizens or subjects of a foreign state, and your petitioners on the other side all being citizens of the State of Illinois, one of the

states of the United states. Your petitioners further represent unto your Honors that the controversy in said cause is in relation to property of great value, acquired by one of your petitioners, the Pullman's Palace Car Company, by mesne conveyances under a sale made by Le Grande W. Perce, a special commissioner of this court, under a decree of this court in the case of *Dunn et al.* vs. *Connelly et al*, general number 44736, said sale having been made March 6, 1880, and confirmed by this court upon the thirteenth day of April, 1880, and that the material matters alleged in said bill of complaint were wholly unknown and a total surprise to your petitioners; that the allegations required upon the part of your petitioners a careful and extensive investigation of the alleged facts in order to prepare the necessary answers to the said bills.

That one of the parties who might have given to your petitioners information as to the material allegations of said bill, died over two years prior to the filing of the bill of complaint in said cause; that another was so seriously ill with the typhoid fever that he could not be consulted upon the allegations of said bill until subsequent to the first day of January, 1884.

That another, who had some knowledge of the alleged circumstances, and with whom it was necessary to confer, in order to prepare answers to said bill, resides out of the state, and could not be reached until after the first day of January, 1884.

Your petitioners further state that it was impossible for them to prepare the necessary answers to the said bill of complaint until they had conferred with the two persons last referred to.

Your petitioners further represent that they used the utmost diligence in investigating said matters alleged in said bill, and in preparing their answers thereto, and prepared and filed them at the earliest possible moment after making the proper and necessary investigations as to the matters alleged in said bill. Your petitioners further state that the time for filing their answers to the said bill of complaint was extended and granted by this court and by agreement of counsel for complainants, until the 11th day of January, 1884. That on said 11th day of January, 1884, said answers of your petitioners were filed. Your petitioners further state that no replications have been filed to the answers filed, as aforesaid, by your petitioners, and also state that the said cause has not been set for hearing by this honorable court, and that the said cause has not yet been tried, but is still pending for trial. And your petitioners further state that said cause could not have been previously tried and heard in the said Superior court of Cook county, and that this petition is filed before or at the term at which said cause could be first tried and before the trial thereof. And your petitioners desire that this suit be removed before the trial thereof into the next Circuit court of the United States, to be held in the Northern district of Illinois, in the seventh judicial circuit, in

pursuance of the provisions of law as contained in an act of Congress, approved the 3d day of March, A. D. 1875, entitled, "An act to determine the jurisdiction of the Circuit courts of the United States, and regulate the removal of causes from said courts, and for other purposes." Your petitioners further show that they are ready and willing to make, and herewith make and file a bond with good and sufficient surety for their entering in the next Circuit court of the United States, to be held in said Northern district of Illinois on the first day of its then next session, a copy of the record in this suit, and for paying all costs that may be awarded by the Circuit court, if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall also then and there appear and enter special bail in said suit, if special bail was originally requisite therein; and also for doing or causing to be done all such other appropriate acts as are required of them in this connection under the jurisdiction of said act of Congress, which said bond is executed by your petitioners, as principals, and J. W. Doane, of the city of Chicago, State of Illinois, as surety, and in the penal sum of six thousand dollars.

Your petitioners therefore pray that said bond be accepted as good and sufficient, according to the said act of Congress, and that this suit may be removed into the next Circuit court of the United States, to be held in said Northern district of Illinois, in said seventh judicial circuit, pursuant to the statutes of the United States in such case made and provided, and that no further proceedings therein be had in this court, except to make the order of removal required by law, according to the statute in such case made and provided.

And your petitioners will ever pray, &c.

PULLMAN'S PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*

GEORGE M. PULLMAN,

LUTHER H. PEIRCE,

HUNTINGTON W. JACKSON,

DAVID B. LYMAN.

LYMAN & JACKSON,
Solicitors for Petitioners.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

Huntington W. Jackson and David B. Lyman, being duly sworn, on oath depose and say that they are two of the defendants in the above entitled cause, and that they are named in and have signed the foregoing petition, and have read the foregoing petition and know the contents thereof, and that the matters and things and

statements and allegations therein contained and stated are true to the best of their knowledge and belief.

HUNTINGTON W. JACKSON,
DAVID B. LYMAN.

Subscribed and sworn to before me this 21st day of February. A. D. 1884.

LYNN T. SPRAGUE,
[SEAL.] *Notary Public.*

It is further agreed that on the 11th day of March, 1884, leave was given by the United States Circuit court to file and docket the said cause in said court without prejudice. (Rec., 140.) That on the 14th day of April, 1884, there was filed in the clerk's office of the United States Circuit court (Rec., 140) a motion to remand, which said motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS.

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.

Robert J. Speck, *et al.*,
18933 *vs.*
Pullman Palace Car Company, *et al.*

And now come said Robert J. Speck and James Dunn by Simeon Straus, his next friend, and Bridget Connelly and Patrick Connelly and enter their appearance specially for the purpose of this motion by Rosenthal and Pence, their attorneys, and move the court to remand said cause to the Superior court of Cook county, and they assign the folllowing reasons therefor:

First. Because the petitioners for such removal did not file their petition or make their application to said Superior court for such removal before or at the term at which said cause could have been first tried, said cause was put at issue by filing of the answers of said petitioners on January 11th, 1884, which was at the January term, 1884, of said Superior court, while the said petition for such removal was filed on February 21st, 1884, which was at the February term, 1884, of said Superior court. That said cause under the statutes and decisions of Illinois could have been tried at the January and February terms of said Superior court.

Second. Because all the defendants to the original bill did not, nor did all the defendants to the cross-bill unite in such petition for removal.

Third. Because there is no controversy in this cause wholly be-

tween citizens of different states which can be fully determined between them, said Bridget and Patrick Connelly are citizens of the same state with said petitioners. And the same controversy and issues exist between them and petitioners as exist between said complainants in the original bill and petitioners.

Fourth. Because the complainants in the original bill are subjects of the queen of the United Kingdom of Great Britain and Ireland, and are not citizens of any of the states of the United States, and petitioners, who are only a part of the defendants to the original bill, and all other parties to this suit are citizens of the State of Illinois. And hence the controversy is not between citizens of different states of the United States, as required by the statutes.

ROSENTHAL & PENCE,
Solicitors for said Robert J. Speck, James Dunn, Bridget Connelly and Patrick Connelly.

It is also agreed that William Coffeen, a clerk of the chancery branch of the superior court of Cook county, Illinois, filed an affidavit April 21, 1884 (Rec., 146), in the Circuit court of the United States in said cause, "that there were no trial calendars ordered by either judge of said chancery branch of said Superior court, nor any calendars made up or printed for the February or March terms of said Superior court, A. D. 1884."

That rule No. 5, in chancery of the Superior court of Cook county (Rec., 145), adopted March 2, 1881, is as follows: "That when any chancery case is at issue upon notice of motion of either party, the case, at any time within ten days of the commencement of the term in which the trial calendar may be ordered made, may be placed upon the trial calendar. The cases on said calendar shall be called and tried on Tuesday, Wednesday, Thursday and Friday of each week. No more than five cases shall be fixed for trial on the same day, but if the court is behind in the call of the calendar, not exceeding six cases shall be called for trial on any one day, and all cases shall appear upon the calendar in the order of notice of motion.

That on the 21st day of April, 1884, the United States Circuit court for the Northern district of Illinois, remanded the said cause to the State court, from whence it came (Rec., 143).

That an appeal from the order to remand, was duly prayed and allowed (Rec., 187), and bond given (Rec., 149), which was duly approved.

LYMAN & JACKSON,
Solicitors for Appellants.

EDWARD S. ISHAM,
Of Counsel.

A. M. PENCE,
Solicitor for Appellees.

Office Supreme Court U. S.
FILED
DEC 1 1884
JAMES H. McKENNEY
CLERK

113-84

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1884.

PHILADELPHIA BAR ASSOCIATION

No. 1060.

PULLMAN'S PALACE CAR COMPANY, GEORGE M. PULLMAN, LUTHER H. PIERCE, HUNTINGTON W. JACKSON AND DAVID B. LYMAN, *Appellants,*

vs.

ROBERT JOHN SPECK, JAMES DUNN, BY SIMEON STRAUS, HIS NEXT FRIEND, BRIDGET CONNELLY AND PATRICK CONNELLY, *Appellees.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT OF APPELLANTS.

LYMAN & JACKSON,
Solicitors for Appellants.

EDWARD S. ISHAM,
Of Counsel.

BARNARD & GUNTHORP, LEGAL PRINTERS, 104 RANDOLPH STREET, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1884.

No. 1060.

PULLMAN'S PALACE CAR COMPANY, GEORGE M. PULLMAN, LUTHER H. PIERCE, HUNTINGTON W. JACKSON AND DAVID B. LYMAN,
Appellants,
vs.
ROBERT JOHN SPECK, JAMES DUNN, BY SIMEON STRAUS, HIS NEXT FRIEND, BRIDGET CONNELLY AND PATRICK CONNELLY,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT OF APPELLANTS.

This is an appeal by Pullman's Palace Car Company, George M. Pullman, Luther H. Pierce, Huntington W. Jackson, and David B. Lyman, defendants below, and petitioners for removal from the order of the Circuit Court of the United States for the Northern District of Illinois, remanding said case to the Superior Court of Cook County, Illinois, from whence it came.

The motion to remand was made by R. J. Speck, and

James Dunn, by Simeon Straus, his next friend, complainants in the original bill, and Bridget Connelly and Patrick Connelly, two of the defendants in original bill and complainants in a cross-bill, through Rosenthal & Pence, solicitors, who appeared for all of said parties. The motion to remand was based upon the following ground (Pr. Rec., p. 28):

First. Because the petitioners for such removal did not file their petition or make their application to said Superior Court for such removal before or at the term at which said cause could have been first tried. Said cause was put at issue by filing of the answers of said petitioners on January 11, 1884, which was at the January term, 1884, of said Superior court, while the said petition for such removal was filed on February 21, 1884, which was at the February term, 1884, of said Superior court. That said cause, under the statutes and decisions of Illinois, could have been tried at the January and February terms of said Superior Court.

Second. Because all the defendants to the original bill did not, nor did all the defendants to the cross-bill, unite in such petition for removal.

Third. Because there is no controversy in this cause wholly between citizens of different states which can be fully determined between them. Said Bridget Connelly and Patrick Connelly are citizens of the same state with said petitioners, and the same controversy and issues exist between them and petitioners as exists between said complainants in the original bill and petitioners.

Fourth. Because the complainants in the original bill are subject to the queen of the United Kingdom of Great Britain and Ireland, and are not citizens of any of the

states of the United States. And petitioners, who are only a part of the defendants to the original bill, and all other parties to this suit are citizens of the State of Illinois, and hence, the controversy is not between citizens of different states of the United States, as required by the statute.

Summarized, the reasons assigned by appellees for remanding the case may be stated to be, first, that the petition for removal was not filed in time; and, second, because Bridget Connelly and Patrick Connelly, defendants in the original bill, and between whom and appellants, as is claimed, the same controversy exists as between the other parties to the suit, are citizens of the same state with petitioners, and have not joined in the petition for removal.

In our opinion, the reasons assigned for the motion to remand are insufficient. Could the case have been tried, as contended for, at the January term, the term at which, as admitted by appellees, the case was put at issue? If this question can be answered in the negative, then the petition was filed in time, to wit: before or at the term at which said cause could be first tried, and before the trial thereof. Under the statutes of Illinois, and the rules of the Superior Court of Cook County, certain requirements are necessary before a case is in condition for trial. An examination of those requirements will more clearly demonstrate that this cause was not triable in January.

Paragraph 29 of chapter 22, Illinois Statute, provides that "after replication is filed, the cause shall be deemed "at issue and stand for hearing; or in default of filing "such replication, the cause may be set for hearing upon "the bill and answers." An examination of the record

fails to show that either replication was filed, or that the cause was set down for hearing. A further examination of the question will show that it was impossible, under the Illinois practice, for said cause to be tried before the month of February. Rule No. 5 in chancery of the Superior Court of Cook County, adopted March 2, 1881, provides as follows (Pr. Rec., p. 29):

"When any chancery case is at issue upon notice of motion of either party, the case at any time within ten days of the commencement of the term for which the trial calendar may be ordered made, may be placed on the trial calendar. The cases on such calendar shall be called and tried on Tuesday, Wednesday, Thursday and Friday of each week. No more than five cases shall be fixed for trial on the same day, but if the court is behind in the call of the calendar, not exceeding six cases shall be called for trial on any one day. All cases shall appear on the calendar in the order of notice of motion."

In this connection it is proper to observe, that section 69, paragraph 34, chapter 37, Revised Statutes of Illinois, provides that the Superior and Circuit Courts of Cook County, may from time to time make all such rules for the ordinary disposition of business before them as may be deemed expedient and consistent with the law, and that section 77 of chapter 37, Revised Statutes of Illinois, also provides that the terms of the Superior Court of Cook County shall commence on the first Monday of every month. It is evident, therefore, as the cause was not at issue, as conceded by appellees in their written motion to remand (Pr. Rec., p. 20), until the 11th of January, 1884, the case could not have been placed upon the January trial calendar, nor upon any calendar until such a calendar was ordered, and the record further shows (Pr. Rec., p. 29) from the affidavit of William Coffeen, clerk of the chancery branch of the Superior Court, that there were no calendars ordered by

either judge of said chancery branch of said Superior Court, and no calendars made up or printed for the February or March terms of said court, A. D. 1884. It seems to us that the above statement demonstrates beyond any possibility, that the cause could not be tried in January, and that the February term was the very first term at which, provided the necessary requirements had been complied with, it was possible to try it.

The remaining question for consideration is whether it was necessary that Bridget and Patrick Connelly should join in the petition for removal. We reply in the negative, and for our authority refer to the case of *Cook* v. *Seligman*, Dillon on Removal (edition of 1881, pages 36 and 37); also same case, 7th Federal Reporter, 263. Judge Blatchford there held that, "where one of the defendants in a suit is, in the averments in the complaint in the state court, an unnecessary and improper party, and no real and actual party, and *the plaintiff is an alien and the defendants are all citizens of various states of the United States*, the case is one removable in this court under the first clause of section 2 of the act of March 3, 1875, when all such other defendants apply for the removal, and when there is a controversy between the alien and such citizens, which is the only controversy in the suit." This authority is directly in point.

In the case before the court the complainants in the state court are aliens. All the defendants are citizens of Illinois. All the defendants, with the exception of Bridget and Patrick Connelly, have joined in the petition for removal. Our position is that the only controversy is between the complainants in the original bill and the petitioners for removal, and that Bridget and Patrick Connelly are unnecessary parties.

The facts disclosed by the pleadings, which show that the controversy is between the complainants and the petitioners are as follows (Pr. Rec., pp. 2–11): That the complainants Robert John Speck and James Dunn reside in England; that in 1873 the complainants and Robert C. Dunn and George Dunn, both of whom subsequently died, filed their bill of complaint in the Superior Court of Cook County against Bridget Connelly and others, in which it was alleged that said Speck and Dunns were each seized in fee simple of the one-eighth part of a certain tract of land subject to the dower of said Bridget Connelly, and that the said Bridget Connelly was seized of the undivided one-half part and dower in the other half of the same tract, being $109\frac{55}{100}$ acres of land, situate in section 14, township 37, north range 14, east of the third principal meridian, Cook County, Illinois. That on the 6th day of June, 1874, a decree was entered finding the interests of said parties to be as alleged in said bill, and ordering a partition thereof. That the commissioners reported that a division of said property could not be made without manifest prejudice to the interests of said parties, and that the value of said premises was $27,387.50. That on August 7, 1874, the said report was confirmed and a sale of said property ordered, which sale should not be made for less than two-thirds of the appraised value thereof, conforming to requirement of statute. That on September 11, 1873, said Bridget Connelly and Patrick Connelly, her husband, executed and delivered to Paul Cornell, a trust deed conveying her interests in said premises to secure their note for $6,000, payable in one year, to the order of George W. Kretzinger and William R. Johnson, said note having been made to secure the said Kretzinger and Johnson for legal services rendered or to be rendered in

and about the premises in question and in and about the said partition suit. That afterwards John I. Bennett became a partner of the said Kretzinger and Johnson, which said firm was shortly dissolved, and the said note became the property of the said Bennett.

The bill further alleges that the Pullman's Palace Car Company did, on or about January 10, 1880, represent unto the said Bennett, who was the attorney of the said Bridget Connelly, that said premises could not be sold for two-thirds of the value appraised by the said commissioners, and that thereupon it entered into an agreement with the said Bennett that if he would procure a reappraisement and sale of said premises, it would purchase them, and would, in addition, pay to him, Bennett, the amount secured by said trust deed; and that a release thereof should be executed, which should be filed for record only after sale under said decree and confirmation of the same; that the said court appointed a new commissioner to reappraise, and that said premises were reappraised at the sum of $12,050.55; that on the 20th day of January, 1880, the said Pullman's Palace Car Company paid to said Bennett the sum of $7,000, the amount due upon said note secured by said trust deed, and that a release of said trust deed was executed and placed in the hands of the said Bennett, with authority to file the same for record after a confirmation of sale made under said decree; that afterwards, the commissioner appointed by the court to make the sale advertised that he would sell the premises on the 6th day of March, 1880, and that Luther H. Pierce, acting for and as the agent of the said Pullman company, bid for said premises the sum of $22,100, and that said premises were struck off and sold to the said Pierce; that objections were made by the said

Bridget Connelly to the confirmation of said sale, but that the same was confirmed by the court; that said complainants did not know of the arrangement of the Pullman company with the said Bennett, nor that said purchaser was paying anything more for said premises than the amount bid therefor at said sale; that upon the 16th day of March, 1880, the court finally approved the said sale, and thereupon the commissioner, under order of court, executed and delivered to the said Pierce a deed of conveyance to said premises; that said company was greatly interested in obtaining the premises in question, the same lying between the property upon which the town of Pullman is now situated and Lake Calumet, and that it was induced to make said agreement with said Bennett and performed the various fraudulent acts because of the importance and value of the said premises to aid in carrying out its schemes; that by fraud and circumvention said Pullman's Palace Car Company caused the said premises to be sold for at least $7,000 less than they would have sold for had said Pullman company, through its agents, not insisted upon its rights to a confirmation of said sale and had the court or the complainants known of the fraud so perpetrated upon them; that on the 13th day of May, 1880, Luther H. Pierce and wife conveyed said property to George M. Pullman, and that on July 2, 1880, the said George M. Pullman and wife conveyed said property to David B. Lyman and Huntington W. Jackson, trustees of the Pullman Land Association, and that said Jackson and Lyman, as trustees of the Pullman Land Association, conveyed said premises to the Pullman's Palace Car Company.

The special relief prayed for (Pr. Rec., 11), is that a decree may be entered, vacating and setting aside said sale

and said order of confirmation, and all orders made subsequent to January 1, 1880, above referred to, and vacating and setting aside the deeds of said Pierce to Pullman and Jackson and Lyman, to Pullman's Palace Car Company, and *vesting title to the one undivided half of said premises in complainants;* ordering a partition to be made *between complainants and said defendants* of said premises, and doing all other things which may be necessary to vest in them their title to the said premises, in severalty, or in lieu of said partition, if the same cannot be made without manifest prejudice to the parties in interest, that a sale may be ordered and decreed, and a distribution of the proceeds had in accordance with equity and the practice of this court.

The defendants Pullman's Palace Car Company (Pr. Rec., 12), George M. Pullman (Pr. Rec., 15), Luther H. Pierce (Pr. Rec., 20), Huntington W. Jackson and David B. Lyman (Pr. Rec., 21), answered, denying all fraud and circumvention, and putting in issue all of the material allegations to the bill of complaint. They insisted that said purchase was made *bona fide* without notice of the matter and things alleged in the bill, except as admitted, and that the complainants have not shown any case in equity, entitling them to proceed against them, and prayed all such benefit as if they had demurred to the said bill.

The Pullman's Palace Car Company further answered (Pr. Rec., 12), denying that it ever made any agreement in relation to the release of said trust deed, or had any knowledge as to any arrangement existing between Bennett and any one in relation to the said trust deed or said release.

It further answered (Pr. Rec., 13), denying that it notified the said Bridget Connelly to withdraw her objections to the confirmation of said sale, or made any threats or gave any notice to the said Bridget Connelly, in relation to the said sale, or in relation to the said trust deed and note.

And further answered (Pr. Rec., 13, 14), that it purchased the said premises from Huntington W. Jackson and David B. Lyman, as trustees of the Pullman Land Association, and paid said trustees the full value for the said premises in cash; it also answered (Pr. Rec., 14, 15), that it had never been approached by the complainants or any one, with any suggestions that the said sale was not regular in all respects; that prior to the filing of the said bill, it had supposed the said complainants were satisfied with said sale; that the solicitors of the said complainants had on more than one occasion assured it or its agents that the said sale was correct and regular in all respects, and that a good title passed by it; that it had been informed that the sale which was made by court, the complainants, by their solicitors, were anxious to have completed, and that the solicitors for complainants made a motion for the confirmation of said sale, and urged the confirmation of said sale, claiming it to be for the best interests of their clients that the sale should be made.

The answer of George M. Pullman further denied (Pr. Rec., 15–17) each and every allegations as to the part taken by the Pullman's Palace Car Company, in relation to the said sale of the property in question; he also answered (Pr. Rec., 17) that the sum of $22,100 was paid at the sale made and conducted under the order of court, after due notice had been made, pursuant to the

order of court, for said sale; that all persons had an opportunity of bidding at said sale; that it was attended by a number of persons; that the bidding was spirited, and that the land brought its full market value. He further denied that there was any agreement on the part of any one to prevent any one from bidding at said sale, or to prevent the land from being sold at its full value. He admitted the purchase of the notes secured by the trust deed from the party holding it, paying therefor the sum of $7,000. He denied that he purchased it in the manner alleged in the bill, and denied that in such purchase there was any fraudulent agreement, act or intent.

He, further answering (Pr. Rec., 19), said that the said Pullman's Palace Car Company had expended very large sums of money in erecting permanent works and shops for the said company, and buildings for the accommodation and convenience of the operators of said company, and in constructing the necessary roads and beautifying the grounds about the said buildings; that all of said improvements had greatly enhanced the value of the said property; that if the said improvements had not been made, the said property would have been now of little or no more value than it was at the time of the said sale by the said court.

He further answered that he had never been approached by the complainants or any one with any suggestions that the said sale was not regular in all respects prior to the filing of the bill of complaint. That he supposed that the said complainants were satisfied with the said sale; that the solicitors of said complainants, on more than one occasion, had assured him or his agents that the said sale was correct and regular in all respects, and that

a good title passed by it; that he was informed and believed that the complainants, by their solicitors, were anxious to have the sale made by the court completed; that the said complainants' solicitors made motion for confirmation of said sale, and urged the confirmation of said sale, believing it to be for the best interests of their clients that said sale should be made.

The answer of Luther H. Pierce (Pr. Rec., 20), denied that the said Pullman's Palace Car Company, by its agents, entered into an arrangement or an agreement with John I. Bennett to have a re-appraisement of said premises, and to procure an immediate sale, or into any agreement as to the amount which was to be bid at the said sale. He further answered that at the sale of said property, under the decree of said Superior court of Cook County, he purchased the said premises, paying therefor the sum of $22,100; that the said premises were struck off and sold to him at the said sale aforesaid; that said commissioners made a report of such sale, which was confirmed by the said court, and that a conveyance was duly made by the commissioners, vesting all the right, title and interest of the said parties to the said suit in him, the said Pierce; that at said sale he acted in behalf of George M. Pullman, individually, in making the said bid and paying the said sum of money. He further denied each and every allegation in relation to there being any fraud in the entry of the decree, and in the sale in said case, or in making of the said sale, or in the matter of the confirmation of the said sale; that the said sale was in all respects fairly conducted; that the said sale was largely attended; that the bidding at said sale was spirited, and that he believed the said property was sold at that time

for its full market value. That for a long period of time prior to said sale the said property had been greatly depressed in value, and the value placed upon it by the commissioners on re-appraisement was the fair value at the time such re-appraisement was made; that said sale was made for all it could have realized at that time in the judgment of said Pierce had the sale been made in private.

The answer of Huntington W. Jackson and David B. Lyman (Pr. Rec., 23), after denying all knowledge of the material allegations of the bill, admitted the conveyance of said premises to them as trustees of the Pullman Land Association, but averred that the said conveyance was made for full value, *bona fide*, and was made for the benefit of parties for whom they held legal title. They also admitted the conveyance of the property subsequently to the Pullman's Palace Car Company, but that the conveyance was made to them at the full value, and that at the time of the said conveyance they had no notice, nor had the said Pullman's Palace Car Company any notice that any party was dissatisfied with the proceedings of the court by which the said property was sold and title passed. They also averred that one of the solicitors for the complainants in said cause on more than one occasion assured them, both prior to their conveyance to the Pullman's Palace Car Company, and subsequently that the said subsequent proceedings were regular in all respects, and that good title passed by said purchase and sale.

The defendants, Bridget Connelly and Patrick Connelly by Rosenthal & Pence, their solicitors being the same solicitors for Robert John Speck and James Dunn, complainants in the original bill filed their answer admit-

ting all and singular the allegations in said bill. (Pr. Rec., 2.)

The cross-bill of Bridget Connelly and Patrick Connelly after describing the separate interests of Bridget [redacted] in said property, makes substantially the same allegations on account of her estate as are in the original bill of complaint averred concerning the share of the complainants, and the Pullman's Palace Car Company, George M. Pullman, Luther H. Pierce, David B. Lyman and Huntington W. Jackson, filed substantially the same answers as those filed to the original bill. (Pr. Rec., 24.) The defendants, Robert John Speck and James Dunn, filed no answer to the cross-bill.

This statement of facts shows exactly what the controversy is which is presented by the original bill in the case. It is a bill by persons who had been tenants in common of an undivided half of certain land sold to a stranger at a partition sale to rescind that sale as to *their half*, with a *prayer* that the *title to that half* may be revested in them. They aver nothing and pray nothing as to the share of the other persons who had been tenants in common with them.

Upon these facts we respectfully submit that the bill fails to show any controversy between Speck and Dunn on the one side and the Connellys on the other. The Connellys do not deny the title or the rights of Speck and Dunn, but on the contrary by their answer (Pr. Rec., 2) admit all the allegations of the original bill. The same solicitors appear for the Connellys, as defendants in the original bill, and complainants in the cross-bill (Pr. Rec., 2), and represent whatever interest they may have (and it is certainly *not an opposing one*), that appear for Speck

and Dunn. The statutes on removal contemplate a *controversy*, not a suit in which *there is no defense* or opposition of interest, as where default has been entered.

Stanhough v. *Griffin*, 52 Iowa, 112.
Burnam v. *Chelivia*, 9 Fed. Rep., 678.

Again, the Connellys have no interest in the land originally belonging to Speck and Dunn, complainants in the original bill, and are neither necessary nor proper parties to the original bill, and this appears by the record.

It appears that formerly Speck and Dunn, complainants in the original bill, and the Connellys owned separate interests in a certain tract of land as tenants in common merely. Excepting the right of sole possession they were owners of estates altogether separate and distinct. The Connellys are neither interested in what was formerly the land of Speck and Dunn, *nor in the relief prayed as to that land by the original bill;* the prayer is merely for recovery of title by Speck and Dunn to what was their undivided half of the land. To that effect are the following citations from Washburn on Real Property, Vol. I., Sec. 3, title "Tenants in common."

"A tenancy in common is where two or more hold *possession* of lands or tenements at the same time by several and distinct *titles*. The quantities of their estate may be different, their proportionate shares of the premises may be unequal, the modes of acquiring these titles may be unlike, and the only unity between them be that of possession." *415 * * * * * "Each owner in respect to his share, has all the rights except that of sole possession, which a tenant in severalty would have, and if he wishes to convey his share to his co-tenant he must do so by the same kind of deed that would be necessary to convey it to a stranger." * * * * * "If one joint tenant convey his share of the estate to a stranger, the

alienee and the other tenant become tenants in common, as has been before stated." *416. "So distinct is the interest of one tenant in common from that of his co-tenant, that if they join in making a lease it is regarded as a demise by each of his own part." *417. * * * "As each has a separate and distinct freehold, if they have been disseized and seek to recover the estate, they must bring separate actions and may not join." *421.

Co. Lit., 200a.

In *Rehoboth* v. *Hunt*, 1 Pick, 227, Parker C. J., said:

"It is very clear that these two towns cannot join in this action; they claim as tenants in common, and ought to sue severally for their undivided right."

So also in Bacon's Abridgment, Title, "Joint Tenants" [K] it is said:

"And although regularly joint tenants are to join and be joined in an action, yet it is *otherwise with tenants in common;* and therefore if in ejectment the plaintiff declares on a lease made by A and B, and on the trial it appears that they are tenants in common, the plaintiff cannot recover; but if A and B had been joint tenants, a joint lease to the plaintiff had been good and he might have declared *quod demiserunt.* And the reason of the difference is that tenants in common are of several titles and therefore the freehold is several, and *if they are disseised they shall be put to their several actions;* as therefore the lands of tenants in common are to be considered as different estates depending on different titles, the plaintiff shall not recover, because *that were to allow the plaintiff to try two several and different titles in one issue at the same time*, and therefore the plaintiff to make out his title must show and prove that each demised the whole to him, else he doth not prove the declaration; whereas the discovery of the tenancy in common proves the contrary, and as they have different titles to a moiety, only, so they could not each of them demise the whole."

The effect of these authoritities is that one tenant in common is not a necessary or even a proper party to a

suit by another affecting his separate estate in land, for the reason that their estates are separate, and that *neither one has any interest in a suit of the other relating to his title* merely, nor any interest in the result of the suit, and for the same reason, the same rule prevails in equity and at law. Accordingly, in Story's Equity Pleadings, § 161, the rule is stated as follows:

"In each of these cases we perceive that there is a community of interest in all the parties, which may be affected by the decree; and therefore all the proper representatives of that interest are required to be before the court. But if the character of the suit should involve *no common right, title, or interest* to be affected by the decree, then all persons claiming in privity of estate are not necessary to be made parties." * * * "So a party partially interested in an estate, as, for example, a tenant for life, *may maintain a suit to set aside a conveyance of such interest* fraudulently obtained from him, without making the other persons interested in the estate parties; *for they have no concern whatever in the conveyance.*"

It is plain, therefore, that the complainants in the original bill, suing a third party to recover their land, had no occasion to make the Connellys, who had been owners of a separate and distinct estate, parties to their bill. The Connellys had no interest in the relief they sought, nor in the result of their suit; nor could the estate of the Connellys be affected by any decree to be made on the bill. The bill prayed no relief against them, nor sought to affect their land. It prayed that the title to an undivided half of the land might be vested in the complainants, and for a partition to be made between complainants and defendants. What defendants? Certainly not the Connellys, for their title had passed to the Pullman company; at least, as far as Speck and Dunn were concerned.

Under such circumstances they were neither necessary nor proper parties to the original bill. The only controversy is between the complainants in the original bill and the petitioners for removal.

The case, therefore, was properly removable under the authority of *Cook* v. *Seligman*, *supra*, 7 Federal Reporter 263.

Turning now to the pretended cross-bill filed by the Connellys, it is apparent that in its nature it is not in legal contemplation a cross-bill at all. It is, as filed by the Connellys, an *original bill* in its nature, *praying relief as to their separate and distinct estate* in land. In that controversy Speck and Dunn have no interest. The fact that Speck and Dunn and the Connellys seek relief as to their separate properties, upon grounds more or less the same, gives neither one any interest in the suit of the other; so that the cross-bill of the Connellys, in its subject matter, does not arise out of the subject matter of the original bill filed by Speck and Dunn as to their land. The alleged cross-bill is confined to the distinctive prayer of the Connellys for relief as to their own distinctive estate. In its nature it has no element of a cross-bill. A cross-bill is a defense; it is its office to introduce matter growing out of the original bill either in *bar* of that bill, or to *qualify the decree* to be made thereon. This does neither one nor the other; it contains *nothing* operating to bar the prayer of the original bill or to qualify the decree to be made thereon. It has no relation to the original bill nor to the property to which it relates, nor to its prayer for relief. It is a separate bill, asking independent relief concerning an independent property. It is, therefore, not a cross-bill in its nature, but is an original bill. It is out of place among the files in this

cause. It is really a separate suit. It cannot be taken in connection with the original bill, so as to make up the equivalent of a bill filed by Speck and Dunn and Connellys as joint complainants. Such a bill would be multifarious by the authorities above cited. These several parties could not join in such a bill concerning their separate and independent properties. The alleged cross-bill, therefore, should be disregarded, and either stricken from the files or treated as a separate and independent suit.

Huntington W. Ja

LYMAN & JACKSON,

Edward S. Isham *Solrs. for Appellants.*

EDWARD S. ISHAM,

Of Counsel.

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113-1884

IN THE

Supreme Court of the United States.

BAR
ASSOCIATION

OCTOBER TERM, A. D. 1884.

THE PULLMAN'S PALACE CAR CO. ET AL.,
Appellants,

vs.

ROBERT JOHN SPECK ET AL.,
Appellees.

BRIEF AND ARGUMENT FOR APPELLEES.

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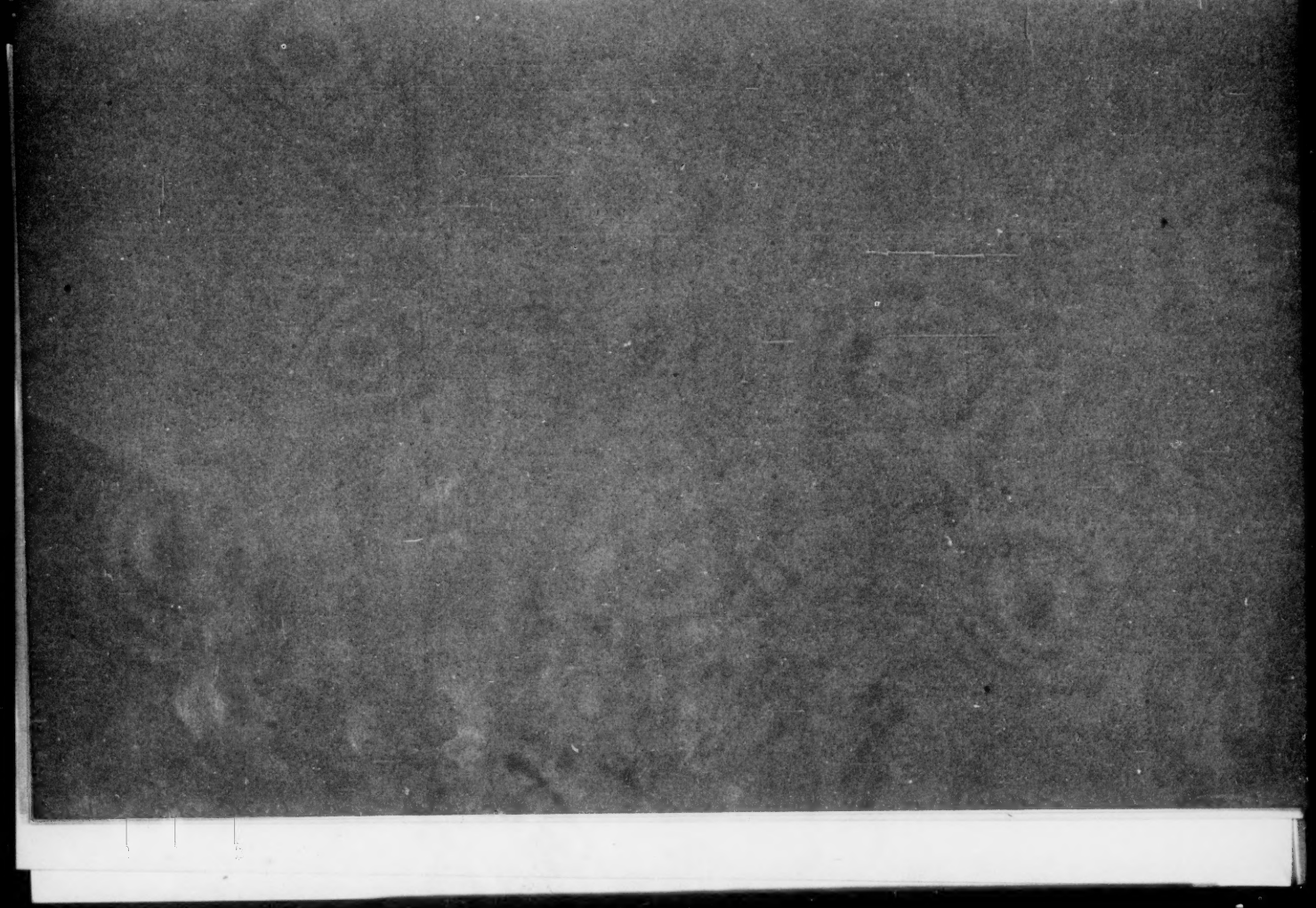

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STATEMENT.

This cause was commenced in the Superior court of Cook county, Illinois, on the chancery side thereof, and a petition for its removal, by some of the defendants, to the United States Circuit court, and a bond as required by statute, were filed. No order for its removal was made by the Superior court of Cook county, but leave was given to file the petition and bond. (Printed Rec., 2.)

Thereupon a transcript of the record of said cause was filed, and said cause was docketed in the Circuit court of the United States for the Northern District of

Illinois, by order of the court, and without prejudice, and a motion was then made by complainants in the original and cross-bills to remand said cause to the Superior court, from whence it came.

The Circuit court holding that it had no jurisdiction entered an order remanding said cause, from which order the petitioners have appealed to this court.

This application for removal was made under the act of Congress of March 3, 1875.

The bill in this case was filed by Robert J. Speck and James Dunn, the latter by his next friend, in the Superior court of Cook county, on August 15, 1883, against Pullman's Palace Car Company, George M. Pullman, Luther H. Pierce, H. W. Jackson, David B. Lyman, Bridget Connolly and Patrick Connolly, and a summons thereupon issued to said defendants, returnable to the first Monday of September following. The writ was duly received ten days before the return day upon all the defendants except upon George M. Pullman and H. W. Jackson. According to the statute of the state the complainants were entitled to a default and a decree *pro confesso* against said defendants so served on the first Monday of September. (Rev. Stat. of Ills., *Cap. Chancery*, § 16.) A standing rule of that court, however, extends the time for answering until the Wednesday following the return day. On that day, which was September 5, all of the petitioners, appellants here entered their appearance, including Pullman and Jackson.

There is a standing rule in said court, that upon entry of appearance by defendant, twenty days further time for answer is given.

The other two defendants, Bridget and Patrick Connolly, (all the other defendants being petitioners for removal) on September 5, 1883, filed their answer to said bill admitting all the allegations therein, and at the same time filed their cross-bill against their co-defendants (petitioners for removal) and against said complainants in original bill.

On September 20, 1883, on application of said petitioners for removal, thirty days further time was granted to them in which to make answer, and on the same day, September 20, in accordance with the practice and the statute, a rule was laid upon all the defendants to said cross-bill to make answer within thirty days from that date. By agreement of counsel for the various parties, and without any further leave from the court, the time for filing answer to said bill and cross-bill was further extended until the 11th day of January, 1884, and on that day answers were filed.

That the January term, 1884, continued until the commencement of the February term, the latter commencing on the first Monday of February. A new term of said Superior court commences on the first Monday of every month.

On February 21, 1884, being at the February term, appellants here being only a portion of the defendants to either the bill or cross-bill, filed in said Supreme court their petition for removal of said cause to said Circuit court of the United States, and on that day leave was given by said Superior court to file said petition and bond, but no order for removal was made by said Superior court.

No answers having been filed either to the original or

cross-bill on October 20, 1883, the day of the expiration of the rule, to answer, the complainants in bill and cross-bill were entitled to a decree *pro confesso*. At the expiration of that rule, the cause could have been tried either upon default, or if answers had then been filed, the court could have tried it immediately. In either case, the court had the power, the jurisdiction, to try the cause.

It might have been inconvenient for the court at that time to try said cause. For the convenience of the court, a rule was passed by the court that each case, when at issue, should be placed upon a trial calendar and tried in order whenever such calendar should be ordered, and it is a fact that no trial calendar was ordered for the February or March term, 1884 (Printed Rec., 29), but notwithstanding such rule the court has the right and power, and exercises the right to try causes at any time when ripe for trial; and the statute of the state and the decision of the Supreme court so provide.

Upon filing said answers, the cause was at issue and ready for trial upon the issues, and could have been tried at the January term, 1884. It was in the power of the court to try said cause at that term. At the next term and on February 21, 1884, petitioners filed their petition for a removal to the United States Circuit court, in the Northern district of Illinois. Between the September term, 1883, the first term at which said cause could have been first tried, and February 21, 1884, there were five terms of said court, at any one of which said cause could have been tried.

Section 3 of the act of March 3, 1875, provides that such petition for a removal *must* be filed "*before*, or at the

"term at which said cause could be *first* tried," otherwise the Circuit court cannot entertain jurisdiction.

The answer of petitioners being due on September 20, 1883, and they having made application for further time to the court, and then having obtained further time by agreement with counsel until January 11th, they will not be permitted to take advantage of their own willful act, and the kindness of the opposite counsel, and thus prolong the time given by the statute. If they can thus prolong a case so they can prolong it for a year, and utterly avoid the spirit of the statute.

Sufficient has been shown to justify the order of the Circuit court remanding such cause to the Superior court of Cook county. The application for removal was not made in apt time.

But this is not a case which could be removed under the statute of March 3, 1875.

To illustrate this it will be necessary to state what the issues are; and the citizenship and relations between the petitioners and the other parties to the suit.

The complainants in the original bill, Speck & Dunn, are citizens or subjects of the Queen of Great Britain and Ireland, residing at Hull, England. The defendants are all citizens of the State of Illinois. The defendants, Mr. and Mrs. Connolly, did not unite in the application for removal. As to the cross-bill, the complainants, Mr. and Mrs. Connolly, are citizens of Illinois, and so are the petitioners for removal, who are defendants to the cross-bill. The defendants to the cross-bill, Speck & Dunn, did not unite in the application for removal.

Mr. and Mrs. Connolly are necessary parties defendant to the original bill, and hence the application does not fall under the first paragraph of section 2 of the act of 1875, for all the defendants or parties on one side of the controversy did not unite or make application for the removal. The bill and cross-bill and all the issues constitute one record; and the issues tendered and the record as it existed at the time the application for a change was made, control. The right of removal depends upon the case disclosed by the pleadings as they stand when the petition for removal is filed. As to the cross-bill the complainants were citizens of the same state as the defendant petitioners. Hence, as to the controversy arising under the cross-bill, it is not a controversy between citizens of a state and foreign states, citizens or subjects. Besides all the defendants to the cross-bill do not unite in the application.

Neither does it fall under the last paragraph of section 2 of act of 1875, as that relates to "a controversy which "is *wholly* between citizens of *different States*," and does not cover a controversy *wholly* between citizens of one state, and citizens or subjects of a *foreign country*.

The Controversy.

The bill alleges that in the year 1874 a decree for partition of the premises in question was entered in a certain suit pending in said Superior court, wherein complainants, Robert J. Speck and James Dunn, and one Robert Dunn, and George Dunn were complainants, and said Bridget Connolly and Patrick Connolly and others were defendants, finding said complainants and defendants to be the owners of said premises, establishing their respective in-

terests therein, and appointing commissioners to make partition thereof. That the court found the complainants therein to be seized each of an undivided one-eighth in fee subject to dower and homestead of said Bridget, and said Bridget Connelly of one-half in fee, besides dower and homestead in the other half.

The commissioners having reported that said premises could not be divided, the court as required by the statute entered an order for the sale of said premises, and for a distribution of the proceeds according to their rights.

The bill then alleges that sale was made under that decree in March, 1880, and at such sale said George M. Pullman became the purchaser, for Pullman's Palace Car Company, of said premises for a certain sum of money.

It is also alleged therein that after said decree of sale, and before said sale, both said Robert Dunn and George Dunn died intestate, and that said decree was not revived as to their heirs. The said James Dunn was insane at time of said sale.

That said Pullman and the officers of said Pullman's Palace Car Company, knowing these facts and being desirous of obtaining an immediate title to said premises, in 1880, paid the person who had been the solicitor of Mrs. Connelly upon the record in said cause, the sum of $7,000, to induce him to have a re-appraisement and immediate sale of said premises, and that such person, though he had been discharged as such solicitor, and had no authority to act for her, and without the knowledge of Bridget Connelly, did act for her and procured an immediate sale of said premises, contrary to her wish and desire.

That said Bridget Connelly was a very ignorant woman, and complainants resided in England and had never been in the United States, and did not move for such sale at that time.

That after said sale and before its confirmation, application was made to have said sale set aside, on the ground that the same had not sold for its value, and that the bid so made by said Pullman was raised $5,000.

That said Pullman resisted such application for a resale, and the court approved the sale so made.

That it was not then known that said Pullman had paid $7,000 more for said land than it brought at such sale, or that he conspired with the solicitor of one of the parties in interest.

The bill seeks to review said sale and the order confirming same, and to set aside and vacate said sale for fraud, and for a partition or resale of said premises.

All the details need not be stated. It is sufficient for the purposes here that fraud is alleged as the basis for setting aside that partition sale. The parties offer to do equity. The question in controversy is the validity of said partition sale and the title of appellants to said premises.

Mrs. Connelly was made a defendant as well as Pullman's Palace Car Company, and others who, as alleged, bought with notice. Mrs. Connelly filed her answer admitting allegations of bill, and uniting in its prayer, she also filed her cross-bill, setting up the same facts substantially and asking the same relief. In both bill and cross-bill the controversy is about the same sale and the title to the same land.

I.

This is not an original bill, but a bill of review, or a bill in the nature of a bill of review, or a bill of revivor, and is substantially the continuation of the old partition suit, and hence cannot be removed to the United States court.

Barrow v. *Hunter*, 99 U. S., 80.
Story Eq. Pl., § 326 *et seq.*
Krippendorf v. *Hyde*, 110 U. S., 276.

The bill in question is filed in the same court where the order and decree in the original suit of partition were entered, and it is sought thereby to review the order of confirmation of the sale made under the decree in the partition suit. The proceeding is supplementary in its character, and is not original. Bills not original are enumerated in § 326 Story Eq. Pl.

This court has constantly held such a proceeding as this supplementary to the original suit, and permits such a suit to be commenced in the United States courts without reference to the citizenship of the parties, solely upon the ground that it is supplementary and ancillary to another suit in such court. See a full discussion in *Krippendorf* v. *Hyde*, 110 U. S., 276.

A bill of review operates upon the decree sought to be reviewed, and opens up the original suit so that the new proceedings are in the original suit. We submit such is the case at bar. It simply seeks to set aside the order of confirmation of the sale under the partition suit, both for error of law, error of fact and fraud. It is

ancillary and supplemental, and being so, cannot be removed from the state to the United States court.

Barrow v. *Hunter*, 99 U. S., 80.

II.

THE APPLICATION FOR REMOVAL WAS NOT MADE IN APT TIME.

(*a*) On September 5, 1883, an answer was due from all the defendants except Pullman & Jackson, who had not been served. On that day an appearance was filed for all said defendants, which gave them 20 days more time under the rule of the court. The time was about expiring, and on September 20, 1883, appellants, on their application, obtained an extension of time to answer for thirty days, which time expired October 20, 1883. No further time was asked of the court, but by consent the matter ran along and the answers were not filed until January 11, 1884, and the application for removal was not made until the next term, on February 21, 1884.

The statute, § 3 of the act of 1875, provides that such petition for removal must be filed "before or at the term at which said cause could be first tried."

This cause could have been first tried at the September term, 1883, after September 20, the day to which the time for answering was extended by a standing rule of court.

It could have been tried at the October term after October 20th, the day to which, by special leave of court, time to answer was extended, and hence it could also have

been tried at the November or December term, 1883, and at the January term, 1884.

"The act of Congress does not provide for the removal "of a cause at the first term at which a *trial can be had*, "on the issues as finally settled by leave of the court or "otherwise, but at the first term at which the cause, as a "cause, *could be tried*."

Babbitt v. *Clark*, 103 U. S., 612.
Attee v. *Potter*, 4 Dill., 559.
Murray v. *Holden*, 1 McCrary.

In Iowa the statute provides that law actions shall be tried at the first term after legal and timely service has been made.

It was held by Judge Dillon in *Attee* v. *Potter*, 4 Dill., 559, that the return term was the first and only term at which application for a change must be made, though the defendants did not enter their appearance until the next term, and the cause ran along for several terms without any issue of fact, and application for removal was made before any issue of fact.

In *Murray* v. *Holden*, 1 McCrary, Judge McCRARY said:

"In this circuit, according to Judge Dillon's statement "in his work on 'Removal of Causes,' the term referred "to is the term at which, under the legislature of the "state and the rules of practice pursuant thereto, the "cause is first triable, *i. e.*, subject to be tried on its mer- "its—not necessarily the term when, owing to press of "business or arrearages, it may be first reached in its "order for actual trial."

This rule was followed by the judge in that case, and he said:

"It was evidently the purpose of Congress to fix an "earlier and a definite time which would not permit the "citizens to experiment in the state court until satisfied "that he would fail there, and then change his forum. In "practice but few contested cases are tried at the first "trial term, and it often happens that controversies arise "upon questions of pleading—so that, as in this case, no "issues of fact are found at that term. It is nevertheless "the term at which, within the meaning of the law, such "cases could first be tried, and therefore is the term at or "before which the petition for removal must be filed. "The statute does not contemplate any delay for the pur- "pose of settling the pleadings in the state court."

"When the first term of the service of process is the "term at which by law a case is triable, then that is the "term to which the act of Congress refers. In other words, "the term at which a case "can first be tried" is the first "term at which it may by law be tried.

"The statute should be construed so as to require liti- "gants who have a choice of forums to make their selec- "tion promptly. Besides, any other rule would cause "vexatious delays. If, for example, we should adopt the "construction and say that the term referred to by the stat- "ute, is the term at which *an issue of fact is joined*, the "result would be that litigants might in many cases postpone "the joining of such an issue by raising and contesting ques- "tions of law in the State court for the purpose of giving "time, as well as of ascertaining the views of the State "court, before applying for a removal, thus continuing un- "der the act of 1875 the abuses which under the previous "acts caused so much and such just complaint."

It is provided (Rev. Stat. Ill., Cap. Chancery, § 16), that all defendants must answer on or before return day of summons, or on or before the time limited, by order of the court, and in default thereof that a decree may be entered *pro confesso*. So it is clear that a hearing might have been had and a decree might have been entered at any time during four consecutive terms previous to filing petition for removal.

Moreover, it is evident that an answer might have been filed during the September term, and during each succeeding term, and the cause might have been tried during each of those terms. As said by Judge McCrary, in the case cited: "The term at which a 'case can first be "tried' is the first term at which it may by law be tried," And this is exactly what was said by this court in *Babbitt* v. *Clark*, 103 U. S., 612.

That the statute means not the term at which a cause *can* be tried, but the term at which it *might* be tried. And this is the rule, constantly held by Judges Drummond and Blodgett.

Judge Bloldgett holds distinctly that the statute means that the petition must be filed at the return term of the summons, or it is too late.

(*b.*) But even according to the rule as contended for by appellants, they filed their petition too late. The answers of petitioners were filed on January 11, 1884, at the January term, and the petition for removal was filed at the February term, February 21, 1884.

Counsel will contend, however, that no replication was filed to their answers, and hence that the cause was not at issue when the petition was filed, and they will refer to

Rev. Stat. of Ill., *Cap.* Chancery, § 29, which provides that the cause shall stand for hearing after replication is filed. But the Supreme court of Illinois held in *Chambers* v. *Rowe*, 36 Ill., 171, that the section referred to does not apply when oath to the answer is waived, and it is there held that a cause is at issue and ready for trial, upon filing of an answer, and without replication. The oath to the answer was waived in this case. All replications under our practice are general, and are merely for the purpose of form, and like a *similiter* in law. A case may be tried without filing same, and is ready for trial without filing same.

So, under their own theory, the petition was not filed before or at the term at which said cause might have been first tried.

But counsel will further contend that under the standing order of the Superior court a cause could not be tried until a calendar is made up and the cause is put upon such calendar. But that rule was adopted for the convenience of that court, and does not provide that a cause cannot be tried until it goes upon a special calendar, but that rule simply provides a method of orderly disposition of cases. (Printed Rec., 29.)

There can be no pretense that such rule limits the power of the court to try causes in any other order. The power of the court in trial of chancery causes is thus stated in *Maher* v. *Bull*, 39 Ill., 538:

"The proper practice is to set the cause for a hearing, "and if afterwards justice or convenience require further "delay, the hearing may be postponed from time to time, "until the court, in its discretion, directs the parties to "proceed therein."

The statutes of Illinois provide "that all causes shall be "tried or otherwise disposed of in the order they are "placed on the docket, unless the court, for good and "sufficient cause, shall otherwise direct."

In *Clark* v. *Marfield*, 77 Ill., 258, the Supreme court said that it was doubtful whether that statute applied to chancery causes, but if it did, that the court in its discretion could change the day of trial. Now, if the statute referred to would not bind the court, so as to prevent the trial of a cause out of its order, certainly the rule referred to would not so bind the court. But it is clear that the court had the right, the power to try this cause the moment the answers were filed, and parties cannot say, that the act of Congress means that a removal may be had at any time, at or before the term at which such a cause might be tried in regular order. If such were the interpretation of this act, then in many cases a cause could be removed a year after it should be at issue, for in our courts in Chicago it takes about a year to reach cases for trial upon the law side of the court and longer on the chancery side. I need only refer to what is said upon this subject by Judge McCrary in the case before quoted from.

As was said in *Babbitt* v. *Clark*, 103 U. S., 606, this cause under the laws of Illinois *was in a condition for trial, and actually triable* at the January term, 1884, and hence the presentation of the petition for removal, at the February term, was too late.

III.

This case does not fall under the *first* paragraph of section 2 of the act of Congress of March 3, 1875, for the reason that if there be a single controversy, then all the necessary parties on one side are not citizens of different states from those upon the other side. If there be more than one controversy involved, and if in one of those controversies all the necessary parties on one side are not citizens of different states from those upon the other, then the case falls under the second paragraph of section 2, and under that paragraph we will hereafter show it is not removable.

The cases applicable to this discussion, and by which it is to be decided, are:

Removal cases, 100 U. S., 457.
Barney v. *Latham*, 103 U. S., 215.
Blake v. *M'Kim*, 103 U. S., 336.
Hyde v. *Rubel*, 104 U. S., 407.

"For the purposes of removal, the matter in dispute "may be ascertained, and the parties to the suit arranged "on opposite sides of that dispute."

"The right of removal, if claimed in the mode pre- "scribed by the statute, depends upon the case disclosed "by the pleadings *as they stand when the petition for* "*removal is filed.*"

Barney v. *Latham*, 103 U. S., 215.
Winchester v. *Lond*, 108 U. S., 130.

We think there was but a single controversy involved in this cause, as disclosed by the original bill, viz., the right and title to the premises in question, or the validity of the sale made under said partition proceedings and the order of confirmation. The complainants, Robert J. Speck and James Dunn, by their bill seek to review and to impeach such sale or order, and after setting aside same, that the title be confirmed in them of one-half of said premises, and that said decree of partition be confirmed, or that partition be made between *complainants* and *defendants* according to their rights. They make appellants here and Bridget and Patrick Connelly, parties defendant. Bridget Connelly, by the decree in the partition suit, received one-half of the said premises, and hence she and her husband were interested in the decree which should be entered in this case, and were necessary parties.

Counsel for appellants claim that there is but one controversy involved, viz., that raised by the original bill, and that Bridget Connelly and husband are not necessary parties thereto, and they argue that each tenant in common, if dispossessed of such premises, must bring a separate action to recover such premises. Such, undoubtedly, was the case at common law as to the right to bring an action of ejectment; but, under the statute of Illinois, several tenants in common may join an action of ejectment. (Ill. Rev. Stat., Chap. 45, § 5.) And so several tenants in common may file a joint bill for partition and have their interests set off together or separately. (Rev. Stat. of Ill., Chap. 106 (Partition), §§ 1, 2, 3.)

According to the authorities cited by counsel, and as is known without authority, the right of possession is joint, and the object of a bill for partition is to sever the joint

possession. The right of possession is property, and where the question of possession is brought into dispute, those persons having an interest therein are necessary parties.

But it strikes us as absurd to say that in a partition suit the tenants in common are not necessary parties. It is true that they do not claim the same interest as complainant, but it is the same controversy, and we should like to know what counsel mean by insisting such persons claiming an interest in property are not necessary parties to a partition. Of course, if it should appear by the pleadings or otherwise that Bridget Connelly did not have or did not claim to have any interest in said premises, she would not be a necessary party; but she does, by her answer as well as by her cross-bill, set up and claim an interest in said premises. Is she not, then, a necessary party? Did she not, under our statute, have the right to unite with complainants in asserting her rights, and had she done so, would it be contended for a moment that appellants would be entitled to a removal, she (Mrs. Connelly) being a citizen of the same state with them?

But under our statute adverse titles can be contested, and every person with a possible or contingent interest must be made a party.

Rev. Stat. of Ill. Cap., 106 (Partition) §§ 5, 6, 15, 39.
Briet v. *Yeaton*, 101 Ill., 242.
Gage v. *Reid*, 104 Ill., 509.

Section 5 provides that "the petition shall set forth the "interests of all parties interested therein so far as the "same are known to the petitioners, including tenants for

"years for life, by courtesy or in dower, and of all per-
"sons entitled to the reversion, remainder, or inheritance,
"and of *every person who, upon any contingency, may*
"*become entitled to any beneficial interest in the premises.*"

Section 6 provides:

"Every person *having any interest, whether in posses-*
"*sion or otherwise*, and who is not a petitioner, shall be
"made a defendant to such petition."

Section 39 provides:

"In all suits for the partition of real estate, whether
"by a bill in chancery, or by petition under this act,
"the court may investigate and determine all questions
"of conflicting or controverted titles, and remove clouds
"upon the titles to any of the premises sought to be par-
"titioned."

In *Gage* v. *Reid*, *supra*, the Supreme court of Illinois, in commenting upon sections 5 and 6, said: "The lan-
"guage of these sections is very comprehensive, and its
"generally accepted import would include all known titles
"whatever their source or character. Again, the 39th
"section is very broad and confers more comprehensive
"jurisdiction than the 5th and 6th sections. The 39th
"section must therefore have been intended to enlarge
"their operation so as to embrace all known claims and
"titles to the premises sought to be partitioned without
"regard to their source. The statute in terms embraces
"all conflicting titles, and every kind of adverse title con-
"flicts with all other titles, and this includes all disputed
"titles of every nature."

Now it is evident that Mrs. Connolly claimed and claims an adverse title to the Pullman's Palace Car Com-

pany. She claims a common or joint possession of the premises with us, and how can we settle either the title or the right of possession which depends upon the title without making Mrs. Connolly a party. There can be no final adjustment of our title which is held in common with the defendant's title without making all the persons claiming title to the premises parties. And hence they are necessary parties. It is not for us to determine as to who has the best title, viz., Pullman's Palace Car Company or Mrs. Connolly, but both claiming a title to the same interest, we are compelled to make parties of both of them and let them fight it out. The pleadings at the time the petition for removal was filed shows the claims of all the defendants, and such pleadings show a controversy between the defendants which must be settled at the same time complainants have their title settled, because the very *gist* of a partition is the separation of the common possession, and to find who is entitled to the common possession, in order to have same separated, we must first find who has the right or title. Mrs. Connolly was a necessary party, and whether you put her upon the one side or the other of the controversy, she is a citizen of the same state with Pullman's Palace Car Company, and the removal cannot be had.

Counsel for appellants claim that the cross-bill of Mrs. Connelly was improperly filed, and they say that a cross-bill can be used only for the purpose of defense. That was the origin of the cross-bill, but now it can be used for purpose of affirmative relief, where the subject matter is germane. Counsel say it could be filed as an original bill. True, it might have been, if no suit had been pending, but when a suit is instituted which is germane, and when a person is made a party, the only legitimate way to liti-

gate a matter which is germane, is by cross-bill. As for instance, this being a partition suit, how could a defendant who is impleaded as a tenant in common, file an independent bill, and not litigate his rights in the first suit.

But appellants answered the cross-bill and submitted to the jurisdiction, and it is too late now to claim that the issues ought to have been raised in another suit. It is enough that they have been raised in this suit, and being so raised, and their litigation entered upon, the only question is whether there is a single controversy, and whether that controversy is wholly between citizens of different states.

But this is a bill of review, or in the nature of a bill of review, and the parties to the original record are necessary parties to this suit.

Mrs. Connelly and husband tender precisely the same issue as complainants in original bill, the complainants in the original bill claiming one-half of said premises, and Bridget Connelly claiming the other half, all claiming title to said premises for the same reason, and raising but one controversy. The bill and cross-bill were answered by all, and so the pleadings stood when the petition for removal was filed.

So, if the parties be arrayed on the opposite side of this controversy or dispute, we find the complainants in the original bill and the complainants in the cross-bill on one side, and the appellants here or petitioners upon the opposite side. Then how will it stand? We find Bridget Connelly and Patrick Connelly, her husband, are citizens of the same state—as are the petitioners for removal—and hence under the first paragraph of section 2 it cannot be removed.

If there be *two* controversies in this suit, one raised by complainants in original bill, and one raised by complainants in cross-bill, then there can be no removal under the first paragraph, as the parties to the controversy raised by the cross-bill, viz: Bridget Connelly and husband, are citizens of the same state with Pullman's Palace Car Company, who are defendants thereto, and who are petitioners for removal.

IV.

If there be two controversies in this cause, viz., one raised by aliens, the complainants in the original bill, and one raised by citizens complainants in cross-bill, there can be no removal under the *second* paragraph of section 2 for one controversy is not between citizens of different states of the United States, but between subjects of *the Queen of Great Britain and Ireland* and a citizen of Illinois. And the other controversy is between citizens of the same state.

The statute reads as follows:

"And when, in any suit mentioned in this section, there "shall be a controversy which is wholly between citizens "of different states and which can be fairly determined as "between them," etc.

The statute only relates to the controversy between *citizens of different states of the United States.* Such is the plain language of the statute, and such is the construction given by this court in

King v. *Cornell*, 106 U. S., 395.
Henry v. *I., M. R. W. Co.*, 7 Biss., 107.

A controversy between *aliens* and citizens, as in this case, cannot be removed under this paragraph.

For all the foregoing reasons the Circuit court properly remanded said cause to the Superior court of Cook county.

A. M. PENCE,

Counsel for Appellees.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1884.

PHILADELPHIA BAR ASSOCIATION

No. 1060.

PULLMAN'S PALACE CAR COMPANY, GEORGE M. PULLMAN, LUTHER H. PIERCE, HUNTINGTON W. JACKSON AND DAVID B. LYMAN,
Appellants,
vs.
ROBERT JOHN SPECK, JAMES DUNN, BY SIMEON STRAUS, HIS NEXT FRIEND, BRIDGET CONNELLY AND PATRICK CONNELLY,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

REPLY OF APPELLANTS.

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Appeal from the Circuit Court of the United States for the Northern District of Illinois.

REPLY OF APPELLANTS.

Before replying to the points of appellees, we desire to correct several inaccurate statements in their brief. These errors regarded separately may not seem important, but when considered collectively, together with the very imperfect statement of the controversy, may, if not corrected, leave an impression prejudicial to the interests of appellants.

On page 7 of appellees' brief it is stated "that said "Pullman and the officers of said Pullman's Palace Car

"Company paid the person who had been the solicitor of "Mrs. Connelly, upon the record in said cause, the sum "of $7,000, to induce him to have a reappraisement and "immediate sale of said premises, and that such person, "though he had been discharged as such solicitor, and "had no authority to act for her, and without the knowl-"edge of Mrs. Connelly, did act for her and procured an "immediate sale of said premises, contrary to her wish "and desire."

Seldom does one meet with a statement more misleading. It contains a charge of a corrupt payment of $7,000 by Mr. Pullman and the officers of the Pullman company to Mr. John I. Bennett, to induce him to procure a reappraisement and sale of the property. Mr. Bennett is also charged with having procured a sale of the premises after he had been discharged as the solicitor of Mrs. Connelly, and had no authority to act for her. The bill will be searched through in vain for allegations to sustain the charges. We refer the court to the bill (Pr. R., p. 2), and the answer of the Pullman company and of Mr. Pullman. (Pr. R., pp. 12 and 15). The fact is, that Bridget and Patrick Connelly executed a promissory note for $6,000 and trust deed to secure Kretzinger and Johnson for legal services rendered, or to be rendered, in and about the partition suit, and that after the dissolution of Bennett, Kretzinger & Johnson, he, Bennett, became the owner of this note and trust deed. (Pr. R., p. 4.)

It was this note and trust deed for which the sum of $7,000 was paid by Mr. Pullman, as he had an unquestioned right to do. For the present, and for this question of removal, this matter must stand solely on the allegations of the bill. There is *no evidence*. But it must be remembered that every suggestion of wrong or of bad

faith is strenuously denied in the answer, and as to them the issue must abide the evidence. But misrepresentations as to the charges of the bill are not to be passed in silence.

Again, there is nothing in the bill to show that Mr. Bennett was discharged as Mrs. Connelly's solicitor, or did not act with authority. On the contrary, the bill alleges that Mr. Bennett appeared in behalf of Mrs. Connelly and procured an order appointing a new commission to reappraise said premises, and as the solicitor of the Connellys, procured the court to approve the reappraisement and to make a supplemental order of sale (Printed Rec., 5), and all these allegations the Connellys in their answer admit.

Again, on page 8, it is stated "that the complainants "did not move for such sale." While it does not appear in the bill that they did not move for the sale, neither does it appear to the contrary that they did not. The bill is silent upon this point. But is it presuming too much to conclude that as they or their ancestors were defendants in the suit, they must, under the practice of the court, have been notified of the various proceedings taken by Mr. Bennett, and since no objection is alleged on their part, that they, by their counsel, approved of them? The counsel of complainants in this cause were the counsel of complainants in the original partition suit. (Printed Rec., p. 23.)

Again, on page 18, it is stated that Bridget Connelly, "by her answer, sets up and claims an interest in said premises," and on page 20 it is stated that Mrs. Connelly and the Pullman company claimed a title to the same interest, and that the complainants were compelled "to make parties of both of them and let them fight it out."

We submit that the answer of the Connellys (Rec., 63) does not show any claim whatsoever. The answer is as follows: "The joint and several answer of said Bridget "and Patrick Connelly, defendants in the above entitled "cause. These defendants, saving, reserving, etc., for "answer unto said bill of complaint filed herein, say that "they admit all and singular the allegations in said bill "contained, and having now fully answered, they pray, "etc." It is *afterwards*, and by a cross-bill, that they set out merely their own claim as to another undivided part of the land.

Finally, on page 21, it is stated that "the bill and cross-"bill were answered by all." The record fails to show that any answer was filed to the cross-bill by the original complainants, Speck and Dunn. This may not be material, except as further evidence to show that *the only controversy is between Speck and Dunn and petitioners for removal, and that as between Speck and Dunn and the Connellys there is no controversy.* If the Connellys should take default on their cross-bill against Speck and Dunn, what decree would they take affecting Speck and Dunn's property? This is also more clearly apparent when we suppose a case in which Speck and Dunn file in the State court a bill against the Connellys, and there are no other defendants. Upon a default by the Connellys or upon their filing an answer similar to the one filed by them to the original bill, admitting all the allegations therein, will it be contended that such a controversy exists between Speck and Dunn on the one side and the Connellys on the other, as to entitle either party to remove the suit to the Federal court?

When there is no controversy the suit cannot be removed, and it has been held in *Keith* v. *Levi*, 2 Fed.

Rep., 743, that there is no right of removal under section 639 of the revised statutes, after a stipulation has been filed in the state court admitting the claim sued upon.

The court, McCRARY, Judge, says: "It is manifest "that there could be no removal of the original case "after the admission of its correctness by the defendant, "and his offer to consent to judgment for the whole "amount claimed. * * * * "The plain meaning is that before a cause can be re- "moved there must be a litigation; that is to say, a "matter, either of law or fact, asserted on one side and "denied on the other. When the matter is alleged by "the plaintiff, and admitted by the defendant, there is no "controversy, no dispute, and therefore, no cause for re- "moval." The conclusion from the pleadings is irresistible that no controversy exists between Speck and Dunn and the Connellys, and the case is brought within the conditions of *Cooke* v. *Seligman*, 7 Fed. Rep., 263, *supra*.

I.

The first point presented by appellees for remanding this cause is, because the bill of Speck and Dunn against Pullman's Palace Car Company *et al.*, is simply ancillary, and supplemental to the original partition suit instituted in 1873, and is therefore not removable.

The bill does not attack the decree, but only seeks to set aside the sale and order of confirmation, (Pr. R. p. 11). The main question is whether appellants purchased the property *bona fide*, a fact which they are not precluded

from showing by anything that appears in the decree of the state court.

In our judgment the bill is not ancillary, but an original proceeding. The following authorities illustrate what is an ancillary suit.

A suit brought to enjoin a suit at law is only ancillary.

The Cortes Company v. *Thannhauser*, 9 Fed. Rep., 226.

Chittenden v. *Same*, 9 Fed. Rep., 226.

So proceedings in garnishment are ancillary.

Pratt v. *Allbright*, 9 Fed. Rep., 634.

A petition merely ancillary to an ejectment suit already passed to a judgment, is not removable.

Chapman v. *Barger*, 4 Dill., 557.

Per contra, the following cases have been held to be removable. If supplementary proceedings are inseparably connected with the original judgment or decree, they can not be removed, but it is otherwise when they are a mere mode of procedure or relief involving an *independent controversy with new or different parties.*

Buford v. *Strother*, 10 Fed. Rep., 406.

Webber v. *Humphreys*, 5 Dill., 223.

Chapman v. *Barger*, 4 Dillon, 557.

A suit to annul a will or to recall a decree admitting it to probate, is removable.

Gaines v. *Fuentes*, 92 U. S., 10.

A bill in chancery by a purchaser at a sheriff's sale, to *procure a confirmation* of the sale is removable.

Parker v. *Overman*, 18 How., 137.

Such a bill is the mere converse of one like the present to *procure* a *vacation* between the parties of *the confirmation* of a sale.

A suit in a state court to restrain or stay execution of judgment of the state court by a seizure and sale of the complainants' lands, may be removed under the act of 1875, although such an injunction has been allowed by the state court, if the requisites as to citizenship and amount exist, notwithstanding that Federal courts are prohibited by the Revised Statutes, section 720, from granting an injunction to stay proceedings in a state court.

Watson v. *Bondurant*, 2 Woods, C. C., 166; WOODS, Circuit judge.

In *Hatch* v. *Preston*, 1 Bissell, 19, it was held by Judge DRUMMOND that "the fact that a suit is connected with "and grows out of matters litigant in a state court does "not prevent the United States Circuit court from taking "jurisdiction in the case, if otherwise within the twelfth "section of the act of 1789, for the removal of cases "from the state to the United States courts. A decree "of a state court binds all parties before it, and this court "will not reverse or alter it, but when a second suit is "brought to connect *other parties* with the transaction "and obtain a decree against them, there is no force in "the objection that this is not an original proceeding and "that the United States court, by assuming jurisdiction, "would interfere with the decree of the state court."

In the case of *Barrow* v. *Hunton*, 99 U. S., 83, cited by appellees, Mr. Justice BRADLEY says: "If the pro-"ceedings are tantamount to a bill in equity to set aside a "decree for fraud in the obtaining thereof, then they con-"stitute an original and independent proceeding, and ac-

"cording to the doctrine laid down in *Gaines* v. *Fuentes*, "92 U. S., 10, the case might be within the cognizance of "the federal courts. The distinction between the two "classes of cases may be somewhat nice, but it may be "affirmed to exist. In the one case there would be a mere "revision of errors and irregularities, or of the legality "and correctness of the judgments and decrees of the "state courts; and in the other class *the investigation of* "*a new case arising upon new facts*, although having re- "lation to the validity of an actual judgment or decree or "of the party's right to claim any benefit by reason "thereof."

The case of *Krippendorf* v. *Hyde*, 110 U. S., 276, cited by appellees, has no application to the case at bar.

Story defines original bills to be those which relate to some matter *not before litigated* in the court *by the same persons standing in the same interests*. Bills not original are those which relate to some matter already litigated in the court *by the same persons*, and which are either an addition to or a continuance of an original bill, or both.

Story Equity Pleadings, 8 edition, Secs. 16 and 426.

II.

Appellees' second point is that the petition for removal was not filed in time. The admission substantially made by appellees in their written motion to remand (Printed Rec., 28), that the January term was the first at which the case could be tried, seems in some part of their brief to be qualified, and an advanced position now taken that

the case could have been tried at the September term, *i.e.*, the return term of the summons. However, on page 15 of their brief, their claim is stated that "this cause under "the laws of Illinois *was in a condition for trial, and* "*actually triable* at the January term, 1884."

Was it possible to try this cause before February? We reply in the negative. As was explained in our opening, the case was not at issue until January 11, 1884. Why it was not at issue before that date is fully set forth in the petition for removal. That part of the petition, verified by affidavit, is as follows (Printed Rec., 26):

"Your petitioners further represent unto your Honors "that the controversy in said cause is in relation to prop- "erty of great value, acquired by one of your petitioners, "the Pullman's Palace Car Company, by mesne convey- "ance under a sale made by La Grand W. Perce, a "special commissioner of this court, under a decree of "this court, in the case of *Dunn et al.* v. *Connelly et al.*, "general number 44,736, said sale having been made "March 6, 1880, and confirmed by this court upon the "13th day of April, 1880, and that the material matters "alleged in said bill of complaint were wholly unknown, "and a total surprise to your petitioners; that the allega- "tions required upon the part of your petitioners a care- "ful and extensive investigation of the alleged facts in "order to prepare the necessary answers to the said "bills.

"That one of the parties who might have given to "your petitioners information as to the material allega- "tions of said bill, died over two years prior to the filing "of the bill of complaint in said cause; that another was "so seriously ill with the typhoid fever that he could not

"be consulted upon the allegations of said bill until sub-
"sequent to the first day of January, 1884.

"That another, who had some knowledge of the al-
"leged circumstances, and with whom it was necessary
"to confer in order to prepare answers to said bill, re-
"sides out of the state, and could not be reached until
"after the first day of January, 1884.

"Your petitioners further state that it was impossible
"for them to prepare the necessary answers to the said
"bill of complaint until they had conferred with the two
"persons last referred to.

"Your petitioners further represent that they used the
"utmost diligence in investigating said matters alleged in
"said bill, and in preparing their answers thereto, and
"prepared and filed them at the earliest possible moment
"after making the proper and necessary investigations
"as to the matters alleged in said bill. Your petitioners
"further state that the time for filing their answers to the
"said bill of complaint was extended and granted by this
"court, and by agreement of counsel for complainants,
"until the 11th day of January, 1884. That on said
"11th day of January, 1884, said answers of your peti-
"tioners were filed. Your petitioners further state that
"no replications have been filed to the answers filed as
"aforesaid, by your petitioners, and also state that the
"said cause has not been set for hearing by this honorable
"court, and that the said cause has not been tried, but is
"still pending for trial. And your petitioners further
"state that said cause could not have been previously
"tried and heard in the said Superior court of Cook
"county, and that this petition is filed before or at the
"term at which said cause could be first tried and before
"the trial thereof."

This statement is sufficient answer to appellees' assertion (appellees' brief, p. 5), that "appellants will not be permitted to take advantage of their own wilful act, and "the kindness of the opposite counsel, and thus prolong "the time given by the statute."

Appellants have not been guilty of wilful neglect or laches. There has been no experimenting with the court. It was absolutely impossible to have filed their answers earlier. Neither did appellants rest their claim for an extension to answer upon the kindness of counsel. This they are pleased to recognize, and return at all times, but the claim was based upon a substantial inherent right, upon the facts set forth in the petition, and counsel know very well, that upon these facts, the chancellor, in his discretion, would unhesitatingly have granted the time necessary to plead, answer or demur. The statute of the United States cannot intend to force parties so situated, to a hearing of the cause at the return of the summons, on pain of losing this forum altogether. There is no remedy in such a statute. The agreement of counsel simply relieved the necessity of an application to the court for an order granting further time, and which, under the circumstances, it would grant, as of course. Certainly, it will not be maintained that when a defendant is seriously ill, and cannot communicate with his counsel, or when defendants are ignorant of the facts alleged in the bill, as in the present case, and time is required to ascertain the matters involved in preparing the answers, that the application for removal must be made at the return term of the summons. Counsel for defendants can not determine in cases where their clients are seriously ill, until they have sufficiently recovered to confer with them, or in cases where their clients are ignorant of the facts

alleged in the bill until discovery is made, what is the advisable course to pursue, to plead, answer or demur, or whether to apply for removal or remain in the State court.

In the case of *Gunne* v. *The City of Brunswick*, 1 Hughes, 277, Chief Justice Waite held that "a cause can-"not be tried until, in some form, an issue has been made "up for trial. The pleadings or statements necessary to "make an issue are regulated by the practice in the court "where the trial is to be had. As soon as the issue is made "up the cause is ready for trial."

In *Whitehouse* v. *Contin. F. Ins. Co.*, 2 Fed. Rep., 498, the court held that "inasmuch as the cause cannot be "tried until the issues are made up, the application is in "time if it come before the pleadings are completed, or "the next term following their completion."

And in *Scott* v. *Clinton & S. R. R. Co.*, 6 Bissell, 536, Judge Drummond recognizes the right of applying for removal when more than one term has passed, when the applicant has not been guilty of negligence. He says:

"But in this case there was not only *no issue* when the "application was made, but there was *no answer* filed by "the parties. It does not appear that there had been *any* "*such negligence* by those who made the application in "this case as to deprive them of the right which was "clearly given by the act of 1875. * * Now, the case "cannot be heard until *there is an issue;* therefore, it was "not competent for the court to try the case, there being "no issue before the court to try. And therefore I think "that within the meaning of the law a term had not "elapsed during which the cause could have been heard." * * "Whether the parties seeking a removal could be

" guilty of such laches as to prevent it, although an issue " had not been made up, and the cause might not be ripe " for hearing, it is not necessary now to decide. It is " sufficient that it does not affirmatively appear in this " case, upon inspection of the record, that such laches ex- " isted on the part of these plaintiffs."

Again the statute carries on its face an implication which is hostile to the claim that removal must be moved for at the return term of the summons. Petition is to be filed " before or at the term at which said cause could be " first tried, and before the trial thereof." The very phrase " *before* the term at which it could be first tried " contemplates the possible intervening of terms of court between the service and return of process and the trial of the cause. It contemplates that some cause may postpone the trial term. It would utterly destroy the remedial quality of the statute if no emergency caused by sickness, death, accident or distance could find room for consideration in favor of parties chargeable with no negligence. No mischief suggested by counsel could do so much violence to the plain legislative intent as this unyielding and remorseless construction which would in most cases destroy all the utility of the act.

The case of *Atlee* v. *Potter*, 4 Dillon, 561, cited by appellees, was controlled by the Iowa statute. The court in that case said, " A different rule might apply in the ab- " sence of any statutory provision as to what shall be the " first term."

The case of *Murray* v. *Holden*, 1 McCrary, 341, also arose under the code of Iowa, as did *Babbitt* v. *Clarke*, 103 U. S., 612, under the laws of Ohio.

III.

The next point made by appellees is that notwithstanding their default in filing replications; notwithstanding the rule of court (Printed Rec., page 29), providing that when a chancery cause is at issue upon notice of motion, the case at any time within ten days of the commencement of the term in which the trial calendar may be ordered made, may be placed upon the trial calendar, and notwithstanding no trial calendars were ordered made up or printed for February, yet the case was triable at the January term. The statute providing for the hearing of chancery causes when at issue, is as follows:

"After replication is filed the cause shall be deemed at "issue and stand for hearing, or in default of filing such "replication, the cause may be set for hearing upon the "bill and answer, in which case the answer shall be taken "as true, and no evidence shall be received unless it be "matter of record to which the answer refers." (Rev. Stat. Ill., Sec., 29, p. 22.)

Appellees say (brief, p. 14) that the Illinois Supreme court held in *Chambers* v. *Rowe*, 36 Ill., 171, that this section does not apply when oath to the answer is waived, as in the present case, and that the "cause is at issue and "ready for trial upon the filing of an answer, and without "replication."

This is not the language of the Supreme court. That court says, (p. 173): "The uniform practice of the courts "in this State has been to *set a cause for hearing* on bill, "answer and deposition, though no replication has been

"filed, in which the defendant's oath is not desired or "where it is waived, as in this case." The case at bar was not "set for hearing" and could not be under the rules of court until the next term, to wit, February. Such, independently of any rule, appears to be the practice of the court. In *Durham* v. *Mulky*, 59 Ills., 92, the court says: "appellant filed his answer at the return term. " * * * No replication being filed the "court ordered that the cause be set down for hearing on "the bill and answer *at the next term of the court*."

It is thus evident that when no replication has been filed that the first term at which the court can set the cause for hearing, is the next term after the filing of the answer, and there is nothing in *Maher* v. *Bull*, 39 Ills., 538, cited by appellees to controvert this.

While appellees recognize the "standing rule" (Appellees' brief, p. 2) which extends the time for answer until the Wednesday following the return day, they assert (Appellees brief, p. 15) that the rule which provides the method for placing a chancery cause upon the calendar would not bind the court. No reason is apparent for this discrimination. The rule was made by virtue of the statute, it is in force to-day, is a part of the practice of the court, and it is respectfully submitted that it is necessary to comply with it, in order to have a case placed upon the calendar for trial.

Courts of record have power to adopt rules of practice, and when established, such rules have the force of law, and are obligatory upon the courts as well as upon parties to causes. *Beveridge* v. *Hewitt*, 8 Bradwell, 467; *Hinckley* v. *Deane*, 104 Ills., 630.

In the case of *Clark* v. *Marfield*, 77 Ills., 258, cited by appellees (appellee's brief, p. 15) the court held that the words of the statute, "for good and sufficient cause," gave the judge the authority to try the cause out of the order it may have been placed on the docket. But in that case, there does not appear to have been any rule of court as in this (Pr. R. p. 29), providing for placing of causes on the calendar, and regulating the number and order in which they are to be tried. In any event, this still leaves the hearing of the case equally beyond the control of the parties. No party can compel the hearing of a cause except in subordination to the standing rule of the court.

IV.

Appellees' next point, is because the Connellys have not joined in the petition for removal. The primary object of the original bill seeks to rescind the sale as to the undivided one-half interest claimed by Speck and Dunn, and to vest the title to the undivided one-half in them. The bill also prays for a partition of the property, but that does not make it as is claimed by appellees (appellees' brief, p. 21), a partition suit. If it is a suit in partition, it is between Speck and Dunn and the Pullman company. The Connellys do not hold any title to the premises; it has been divested by the sale. The legal title is in the Pullman company. The bill does not aver that the Connellys have any title or claim any interest in the premises. No relief is sought against them, and no case made against them, and for these reasons section 39 of chapter on partition has no application. It was unnecessary to make the Connellys defendants. Full and complete relief could

be afforded without their presence in the suit. The right of removal cannot be defeated by the joinder as defendants of citizens of the same state with the plaintiff, if no relief is prayed against them, and they are made defendants without any reasonable cause.

Board of County Commissioners of Arapahoe Co. v. *Kansas C. Ry. Co.*, 4 Dillon, 277.
Barney v. *Latham*, 103 U. S., 214.
Hyde v. *Ruble*, 104 U. S., 407.
Bacon v. *Rives*, 106 U. S., 99.

As we understand the question, the only title which can be investigated in a partition suit, is a title of record; and this is not the original partition suit.

But the prayer for partition is obnoxious for multifariousness. A prayer for partition is distinct and separate from a prayer for rescinding the sale. In the answers to the original bill, the same advantage was prayed as if the bill had been demurred to (Printed record, p. 15), and if objection to the bill on the ground of multifariousness is raised by answer, the court may allow the objection.

Barney v. *Latham*, 103 U. S., 215.
Labadie et al. v. *Hewitt*, 85 Ill., 344.
Henderson v. *Cummings*, 44 Ill., 325.

The court may *sua sponte* object to a bill for multifariousness.

Gilmore v. *Sapp*, 100 Ill., 302.

V.

Appellees further contend that a controversy is presented by the Connellys in their cross-bill, and say it is now too late to object to the filing of the cross-bill. This is not the first time at which objection was made. In the answers to the cross-bill demurrers were included (Printed record, p. 24), as they were also in the answers to the original bill, and if we are right in our opinion that the cross-bill is really an original bill, then it should be stricken from the files.

In any event, it should not be permitted to defeat appellants' right of removal, and the authorities so held. In *Donahoe* v. *Mariposa Land & Mining Company*, 5 Sawyer, 163–171, the court said: "The fact that a cross-bill "has been filed, setting up the same matters put in issue by "the original bill and answers, cannot change the charac- "ter of the case or affect the question of jurisdiction. "*The original bill is still the suit*, the cross-bill being but "an appendage constituting a part of it."

It is auxilliary to the present suit and a graft and dependency on it.

Rubber Co. v. *Goodyear*, 9 Wall., 809.

When an original bill in chancery is dismissed for want of jurisdiction the cross-bill in the same cause must follow the fate of the original bill.

Loomis v. *Freer et al.*, 4 Brad., 547.
Slasan v. *Wright*, 14 Vt., 209.

Because the language of Judge Blatchford, in the case

already cited, of *Cooke* v. *Seligman*, 7 Fed. Rep., 264, seems to comprehend the exact relation of the parties here upon this question of removal, we call attention to it again by the following quotation:

"So that part of the prayer of sub-division three, which "relates to the superior right of the original allottees, is "to be rejected as surplusage, and Wostenholme stands "as an unnecessary and improper party to the suit, and "no real and actual party. This being so, it follows that "the suit is removable under the first clause of section 2 "of the act of 1875, as being a suit in which there is a "controversy between citizens of various states of the "United States and a foreign citizen or subject, and where "all the parties defendant have applied for the removal, "and where such controversy is the only controversy "there is in the suit. The petition for removal makes "out a case under said first clause, although it may be "framed so as to attempt to make out, also, a case under "the second clause of the same section."

All of which is respectfully submitted.

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